

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2018

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.P.No.8574 of 2018
and WMP.Nos.10510 of 2018

1.Chinnasamy
2.Ragupathi @ Thirumoorthi
3.Bakkiyaraj ... Petitioners

Vs.

1.The District Collector,
Erode, Erode District.
2.The Tahsildar,
Perundurai Office,
Perundurai Taluk,
Erode District.

3.T.K.Boopathi ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent in Na.Ka.No.9879/2017/A8 dated 01.03.2018, quash the same and consequently direct the respondents 1 and 2 to grant natham patta to the petitioner for the Survey Number 86/1, Thalayampalayam Village, Perundurai Taluk, Erode District.

For Petitioners : Mr.A.Sundaravadhanan

For Respondents : Mr.R.Udhayakumar
Additional Government Pleader for R1 and R2

O R D E R

(Order of the Court was made by M.SATHYANARAYANAN, J.)

By consent, this Writ Petition is taken up for final disposal.

2. The petitioners are father and two sons and according to them, they are in possession and enjoyment of "Grama Natham" lands in S.No.86/1, Thalayapalayam Village, Perundurai Taluk, Erode District and they have put up a small hut and eking out their livelihood as agricultural coolies. One T.K.Boopathi/third respondent herein has submitted a petition dated 30.10.2017 alleging encroachment on the part of the petitioners and three others on the lands in S.No.86/1 and further encroachment on public road/pathway and based on the same, the second respondent has conducted an enquiry and concluded that the petitioners are in possession of the lands in S.No.86/1 by way of encroachment to an extent of 596 sq.mtrs, wherein they have put up wired fence and live fence and also put up superstructure in an area around 10 sq.ft and therefore, directed the Revenue Inspector of Perundurai to take action by issuance of notice to the petitioners and other encroachers. Challenging the legality of the same, the petitioners have filed this writ petition.

3. The learned counsel appearing for the petitioners would submit that admittedly, the lands in question has been classified as "Grama Natham" and therefore, the provisions of the Tamil Nadu Land Encroachment Act, 1905 [in short "TLE Act"] has no application at all and hence, prays for interference.

4. Per contra, Mr.R.Udhayakumar, learned Additional Government Pleader, who accepts notice on behalf of the respondents 1 and 2, would submit that the land in question has been classified as "Grama Natham" and the petitioners had encroached upon public pathway and even otherwise, the petitioners are having effective alternative remedy in the form of appeal under Section 10 of the TLE Act therefore, this writ petition is not maintainable.

5. This Court has considered the rival submissions and also perused the entire materials placed before it.

6. Though the petitioners pray for larger relief, this Court, in the light of the above facts and circumstances and without going into the merits of the claim projected by the petitioners, grants liberty to the petitioners to file an appeal before the first respondent under Section 10 along with a petition for stay under Section 10-B of the TLE Act, within a period of four weeks from the date of receipt of a copy of this order and the first respondent or his delegated official, upon receipt of the same, shall entertain the appeal along with the petition for stay, if the papers are otherwise in order. The first respondent or his delegated official, shall initially take up the stay petition and give disposal on merits and in

accordance with law within a period of three weeks from the date of entertainment of the appeal and till such time, the second respondent as well as the Revenue Inspector, Perundurai Taluk, Erode District, shall defer further decision in terms of the impugned notice. The first respondent or his delegated official, shall also take up the main appeal itself and give disposal on merits and in accordance with law within a period of ten weeks from the date of entertainment of the appeal and communicate the decision taken, to the petitioners. It is also made clear that the petitioners, till the disposal of the appeal by the first respondent or his delegated official, shall not create any third party rights in respect of the lands in question and shall not alter it's physical features also.

7. This Writ Petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

jvm

To

1.The District Collector, Erode, Erode District.

2.The Tahsildar,
Perundurai Office, Perundurai Taluk, Erode District.

+1cc to Mr.A.Sundaravadhanam, Advocate, S.R.No.26377

+1cc to the Government Pleader, S.R.No.17231

W.P.No.8574 of 2018

SR(CO)

RRK(16/04/2018)

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