

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.04.2018

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

WP.No.8675/2018 & WMP.No.10598/2018

Anthoniummal

Petitioner

Versus

1.The District Collector
O/o.The Collectorate
Salem.

2.The District Revenue Officer
O/o.The Collectorate
Salem.

3.The Revenue Divisional Officer
O/o.The Collectorate
Salem.

4.The Tasildar
Taluk Office, Gangavalli Town
and Taluk, Salem District.

5.The Revenue Inspector
Veeraganur Firka,
Veeraganur Town and Post
Gangavalli Taluk, Slame District.

6.The Village Administrative Officer
Veeraganur North, Veeraganur Town and Post
Gangavalli Taluk, Salem District.

Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the entire records of the order dated 17.032018 [received by the petitioner on 23.03.2018] passed in the proceedings in Na.Ka.No.30205/2017/K2 and quash the same and consequently, direct the respondents not to interfere with the

peaceful possession of the property of the petitioner measuring about 2305.5 sq.ft., in S.Nos.351/20, 351/21 purchased vide Doc.No1782/2000 on the file of the Sub Registrar, Gangavalli.

For Petitioner : Mr.K.R.Samratt

For Respondents: Mr.T.M.Pappiah, Spl.GP

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.,]

By consent, the writ petition is taken up for final disposal. Mr.T.M.Pappiah, learned Special Government Pleader advocate accepts notice on behalf of the respondents.

2 The petitioner claims that she is a house wife and she got married to one Vadivelu, who is a retired staff of the Tamil Nadu Electricity Board and out of said wedlock, three sons were born and all of them are married. The petitioner would state that her husband had purchased a house site classified as "Grama Natham" [village site], admeasuring to an extent of 2613 sq.ft. comprised in Survey No.352/6 of Veeraganur Village, through a registered Sale Deed bearing Doc.No.63/1992 dated 13.01.1992 registered on the file of the Sub Registrar, Gangavalli. The petitioner further claims that she has purchased the adjacent property/house site [gramanatham] in the very same village on 30.11.2000, admeasuring to an extent of 2305.5 sq.ft., in S.Nos.351/20 and 21 through a registered document No.1782/2000 registered on the file of the Sub Registrar, Gangavalli. The petitioner also averred that after obtaining planning approval, a construction has also been put up and it is also subjected to statutory levies.

3 The petitioner would state that on a earlier occasion, the 4th respondent herein has issued notices dated 05.09.2017 and 18.09.2017 under section 6 of the Tamil Nadu Land Encroachment Act, 1905 [Tamil Nadu Act 3 of 1905] in respect of the property comprised in S.Nos.351/20 and 21 and it was put to challenge in WP.No.26090/2017 and vide order dated 05.10.2017, the writ petition came to be disposed of granting liberty to the petitioner to file an appeal before the 1st respondent herein and accordingly, she filed an appeal and the 1st respondent has entertained the same and dismissed the appeal vide impugned order 17.03.2018, holding that as per the present village accounts, the land occupied by the petitioner in S.Nos.351/20 and 351/21 is classified as "Government Poramboke Grama Natham Vacant Site" and taking into consideration the report of the 4th

respondent, has found that the petitioner is not entitled to patta and issued directions to initiate proceedings under the provisions of the Tamil Nadu Land Encroachment Act, 1905 and further held that interference is not warranted in respect of notices issued by the 4th respondent u/s.6 of the Tamil Nadu Land Encroachment Act, 1905, and making a challenge to the said order, the present writ petition came to be filed by the petitioner.

4 The learned counsel appearing for the petitioner has drawn the attention of this Court to section 2 of the Tamil Nadu Land Encroachment Act, 1905 and would submit that the said Act has no application to the lands owned as house-site or backyard and further invited the attention of this Court to the Judgment rendered by a Single Bench of this Court reported in 2013 -4-LW-76 : MANU /TN/0863/2013 [A.R.Meenakshi Vs State of Tamil Nadu, the District Collector, The Tahsildar and The Commissioner], and would submit that the learned Judge, after taking note of very many decisions as found that in respect of the land which is classified as Grama Natham, has held the provisions of the Tamil Nadu Land Encroachment Act, 1905, have no application and hence, prays for quashment of the same.

5 Per contra, Mr.T.M.Pappiah, learned Special Government Pleader appearing for the respondents would submit that the 1st respondent, after going through the entire records as well as the report of the 4th respondent, has rightly concluded that the petitioner is not entitled to patta and therefore, sustained the notices of the 4th respondent issued u/s.6 of the Tamil Nadu Land Encroachment Act, 1905 and prays for dismissal of the writ petition.

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

7 In the considered opinion of the Court, once the land is classified as Grama Natham, the provisions of the Tamil Nadu Land Encroachment Act, 1905, cannot be invoked and the ratio laid down in the above cited decision is also to that effect. Even as per the impugned order, the land said to be encroached by the petitioner in S.Nos.351/20 and 351/21, is classified as "Government Poramboke Grama Natham Vacant Site". The learned Judge, in the above cited decision has also taken note of the said aspect in paragraph No.24 and observed that by using such phraseology, the District Collector used all expressions together very loosely.

8 In the light of the fact that in respect of the land/site classified as Grama Natham [village site], the provisions of the Tamil Nadu Land Encroachment Act, 1905, have no application and the impugned order passed by the 1st respondent is liable to be quashed.

9 In the result, the writ petition is allowed and the impugned order passed by the 1st respondent in Na.Ka.No.30205/2017/K2 dated 17.03.2018 is hereby quashed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True copy//

Sub Assistant Registrar

AP

To

- 1.The District Collector
O/o.The Collectorate
Salem.
- 2.The District Revenue Officer
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- 6.The Village Administrative Officer
Veeraganur North, Veeraganur Town and Post
Gangavalli Taluk, Salem District.

+2cc to Mr.K.R.Samratt, Advocate SR.No.26719
+1cc to Government Pleader SR.No.27219

WP.No.8675/2018

GN(19/04/2018)