

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.NO.3906 OF 2018

P.Kesavan

... Petitioner

Versus

1. The District Collector
Collectorate
Salem District.
2. The District Revenue Officer
Collectorate
Salem District.
3. The Revenue Divisional Officer
Attur Taluk & Post,
Salem District.
4. The Tahsildar
Attur Taluk & Post,
Salem District.

5.Lakshmi
6.Senthil Kumar
7.N.Sugumar

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents 3 and 4 herein to consider the representation dated 25.07.2017 submitted by the petitioner in the light of G.O.Ms.No.540 Revenue (LD6 (2)) Department, dated 04.12.2014 and to remove the encroachment made by the 5th to 7th respondent which is situated in Ward No.A, Block - 3, TS No.29, 15, 14, 23, 22, 21, 17, 14 Ward - A, Block - 4, TS No.4/1, 4/2, 30, 29, 28/1, Ward A, Block - 6, TS No.41, 40, 28, Ward A, Block-5, TS No.23, which is situated in Mullaivadi Village, Attur Taluk, Salem District, within a time frame.

For Petitioner

:Ms.V.Anandhi Devi
for Mr.A.Rajakumar

For Respondents : Mr.R.Udhayakumar
1 to 4 Additional Government Pleader

For Respondent 5: Mr.L.Mouli

For Respondent 6: Mr.A.Raja Mohamed

O R D E R

(ORDER OF THE COURT WAS MADE BY M.SATHYANARAYANAN, J.)

By consent, the writ petition is taken up for final disposal. Mr.R.Udhaya Kumar, learned Additional Government Pleader, accepts notice on behalf of the respondents 1 to 4. Mr.L.Mouli, learned counsel appears for the fifth respondent and Mr.A.Raja Mohamed, learned counsel appears for the sixth respondent.

2. The petitioner claims that he owns agricultural lands admeasuring an extent of 05.58 acres in S.Nos.914/5, 96/1 and 21/2, in Mullaivadi Village, Attur Taluk, Salem District, through a registered settlement deed, bearing Document No. 65 of 2015, dated 15.12.2014 and claims to be in possession and enjoyment of the same right from the date of the said document. It is the specific case of the petitioner that there is a Stream (Odai) in Ward - A, Block - 3, TS No.29, 15, 14, 23, 22, 21, 17, 14, Ward - A, Block - 4, TS No.4/1, 4/2, 30, 29, 28/1, Ward - A, Block - 6, TS No.41, 40, 28, Ward - A, Block - 5, TS No.23, in Mullaivadi Village, Attur Taluk, Salem District and the private respondents had encroached upon the same. In this regard, he submitted repeated representations and last of such representation was submitted on 25.09.2017 to the third respondent. The Village Administrative Officer has also recorded the statement confirming the said fact of encroachment. Since no action has been taken to remove the same, the petitioner, came forward to file this writ petition.

3. The learned counsel appearing for the petitioner would submit that despite the report of the jurisdictional Village Administrative Officer, no steps or whatsoever have been taken, to remove the said encroachments and therefore, he was constrained to file this writ petition.

4. Per contra, Mr.R.Udhaya Kumar, learned Additional Government Pleader, appearing for the respondents 1 to 4, would submit that the lands in question, comes under the control of the Public Works Department, Irrigation, Attur, Salem District, and Form - II notice has also been issued under the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act and Rules framed thereunder and the petitioner is also an encroacher and therefore, prays for appropriate

orders.

5. The learned counsel appearing for the fifth respondent would submit that in respect of the lands in question, only it is used for keeping the crops and as such, the petitioner and the fifth respondent cannot be termed as encroachers.

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

7. This Court, taking into consideration the above facts and circumstances, and without going into the merits of the claim projected by the petitioner, permits the petitioner as well as the private respondents viz., respondents 5 to 7 and other encroachers, if any, to respond to the Form - II notices, issued by the Assistant Engineer, Irrigation, Public Works Department, Attur, Salem District, by enclosing relevant and authenticated documents, within a period of four weeks from the date of receipt of a copy of this order and the Assistant Engineer, upon receipt of the same, shall consider and dispose of the same, on merits and in accordance with law, within a further period of four weeks thereafter and till such time, the respondents 1 to 4 as well as the Assistant Engineer, Irrigation, Public Works Department, Attur, Salem District, shall defer further decision, in terms of the said notice. It is also made clear that the petitioner and the private respondents as well as other encroachers, till the disposal of the representations, by the concerned official of the Public Works Department, shall not create any third party rights, in respect of the lands in question, said to have been in their possession and shall not alter physical features also.

8. The writ petition stands disposed of accordingly. No costs.

9. The Registry is directed to communicate this order to the Assistant Engineer, Irrigation, Public Works Department, Attur, Salem District.

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

TK

To

1. The District Collector
Collectorate
Salem District.
2. The District Revenue Officer
Collectorate
Salem District.
3. The Revenue Divisional Officer
Attur Taluk & Post,
Salem District.
4. The Tahsildar
Attur Taluk & Post,
Salem District.

copy to

The Assistant Registrar
Irrigation, Public Works Department
Attur, Salem District.

- +1 CC to Mr.A. Rajakumar, Advocate sr 37756.
+1 CC to Mr.L. Mouli, Advocate sr 38075.
+1 CC to Spl. Govt. Pleader sr 38703

SVN(CO)
SP(02/07/2018)

W.P.NO.3906 OF 2018

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