

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.03.2018

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE Mr. JUSTICE S.VAIDYANATHAN

W.P.No.3909 of 2018 and
W.M.P.No.4808 of 2018

1. Rajagopal
2. Malliga ... Petitioners

Vs.

1. The District Collector,
Salem, Salem District

2. Tahsildar,
Salem West,
Salem, Salem District

3. The Revenue Inspector,
Alagapuram Firka,
Salem West Taluk,
Salem District

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari to call for the entire records relating to impugned order passed by 2nd Respondent in order dated 09.01.2018 and quash the same.

For Petitioners : Mr.J.Milton Arul Rajendran

For Respondents : Mr.A.N.Thambidurai
Special Government Pleader

O R D E R

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

Heard the Learned Counsel for the Petitioners and the Learned Special Government Pleader for the Respondents. No counter is filed on behalf of the Respondents. By consent, the main Writ Petition itself is taken up for final disposal.

2. According to the Petitioners, the Impugned Notice dated 09.01.2018 issued by the 2nd Respondent / Tahsildar Salem District, requires the Petitioner to vacate from the land in

question belonging to the Government in Survey No.37, Reddiyur Village, classified as 'Kodi vaikal' measuring a total extent of 0.0300.0 out of which 0.0197.5, which is in enjoyment of the Petitioners within a period of seven days from the date of receipt of Notice. In the notice dated 09.01.2018 issued by the 2nd Respondent, the nature and enjoyment of the Petitioners is mentioned as the Petitioners are running a Fast Food Centre (Malliga Hotel) by putting up an asbestos cement sheet and also running 'Rahul Sticker Shop'. In this connection, the Petitioners point out that the originally the Land mentioned in the impugned order dated 09.01.2018 of the 2nd Respondent pertains to one P.K.Palanisamy Son of Kanda Gounder, who executed a sale deed dated 12.03.1947 in favour of Angammal wife of Thasa Gounder (Vide Document No.1065 of 1948) on the file of Registrar Salem) in respect of land comprised in Survey No.101.

3. It comes to be known that the said Angammal had executed a sale deed to and in favour of Palaniammal, in turn, Legal Heir of Palaniammal, namely, Veerapathira Mudaliar and Upathirayar Venkataram made partition with Palaniammal (as per Document No.4228 of 1959) on 07.11.1959 on the file of Joint Sub Registrar, Salem. As a matter of fact in the part of land of Veerapathiran Mudaliar, the Legal Heir executed a sale deed dated 30.11.1959 (Document No.5856 of 1959) to and in favour of Meenakshiammal wife of Marimuthu Mudaliar. The rest of the Land is retained by Veerapathiran Mudaliar, viz., Harikrishnan and Malliga (Malliga is arrayed as 2nd Petitioner). In fact, Meenakshiammal and her husband Marimuthu Mudaliar had settled the property in favour of their son, viz., Rajagopal, (the 1st Petitioner).

4. The Learned Counsel for the Petitioners submits that all the electricity bills, property tax receipts and house tax receipts do stand in the name of 2nd Petitioner, Malliga to establish their enjoyment over the property.

5. The Learned Counsel for the Petitioners contends that the Impugned Order of the 2nd Respondent dated 09.01.2018 is passed without considering the Petitioners' title and enjoyment by means of possession of the property from the year 1948 and further the impugned order mentioned the land obtained more than the transaction. In fact, the 2nd Respondent mentioned in the Impugned notice about the classification of Petitioners lands as 'Kodi Vaikal'. Further, the said fact is not true because of the fact that the said Land is under the enjoyment of the erstwhile owner of the Petitioners' land from the year 1948.

6. The Learned Counsel for the Petitioners brings it to the notice of this Court that the Petitioners appeared in person soon after receipt of show cause notice dated 09.01.2018 and

explained to the 'Authority' about the possession and enjoyment of the property for a very longer time.

7. The Learned Counsel for the Petitioners proceeds to point out that the Petitioners' Land is comprising in Survey No. 101/2A, whereas, the impugned order mentions as Survey No.37, as such, the Impugned Notice is null and void.

8. Per contra, it is the submission of the Learned Special Government Pleader for the Respondents 1 to 3 that for the Notice issued under Section 7 of the Tamilnadu Land Encroachment Act, 1905 the Petitioners had failed to submit their reply by means of objections and thereafter, the Authority was performed to pass proceedings under Section 6 of the Tamil Nadu Land Encroachment Act on 09.01.2018. Hence, the Petitioners are not entitled to take a contra plea that they had made representation before the 2nd Respondent about their enjoyment and possession of the property in question.

9. In this connection, this Court, very pertinently points out that payment of Electricity charges, House tax, '2B charges', possession of Adhar Card Ration card etc., all these documents shall not confer title in respect of the property in which the Petitioners' occupy and in enjoyment of the same. At best, these documents only go to prove that they are residing in the property in question. When the Petitioners were issued with Notice under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 wherein the Survey Numbers have been clearly mentioned by the 2nd Respondent specifying the extent and the nature of enjoyment of the property, then, they are not entitled to occupy the Government Land and in the absence of any tangible documents to exhibit their ownership or claiming title over the subject matter of the property, then, this Court is of the earnest opinion that they cannot squat on the property on any score. The non furnishing of written objections by the Petitioners for the Impugned Notice dated 09.1.2018 issued by the 2nd Respondent certainly is not a favourable circumstance in their favour, as opined by this Court. सत्यमेव जयते

10. When the Respondents' side denied the fact of the Petitioners appearing before the 2nd Respondent and putting forward their objections orally, then, this Court is of the considered view that on the side of the Petitioners, they are not able to show any piece of material in and by which, they had raised their objections in the Impugned Notice issued to the Petitioners.

11. Inasmuch as the Petitioners were issued with the Notice under Section 6 of the Tamilnadu Land Encroachment Act dated 09.1.2018 and admittedly, when they are not owner of the property in question, they cannot in the considered opinion of

this Court can remain any longer in the property in question to run 'Rahul Sticker Shop' and 'the Malliga Hotel'. To secure ends of justice, they are directed to vacate from the property in question within a period of five weeks from the date of receipt of copy of this order. It is open to the Petitioners to remove their belongings and materials from the Rahul Sticker Stop and Malliga Hotel within a period of one week from today. If any resistance is offered by the Petitioners, then, it is open to the Authorities to seek police assistance in regard to the removal of encroachment in question.

In view of the foregoing, the Writ Petition stands disposed of. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ssd

To

1. The District Collector,
Salem, Salem District
2. Tahsildar,
Salem West,
Salem, Salem District
3. The Revenue Inspector,
Alagapuram Firka,
Salem West Taluk,
Salem District

+lcc to Mr.J.Milton Arul Rajendran, Advocate, S.R.No.17815

+lcc to the Government Pleader, S.R.No.18171

TM(CO)
RRK(09/03/2018)

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