

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2018

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

W.P.No.10828 of 2018

and

W.M.P.Nos.12770 to 12772 of 2018

1.K.Palanisamy
2.P.Govindammal ... Petitioners

Versus

1. The District Collector,
Tiruppur District,
Tiruppur.

2. The District Revenue Officer,
Tiruppur District,
Tiruppur.

3. The Revenue Divisional Officer,
Tiruppur Revenue Division,
Tiruppur District,
Tiruppur.

4. The Tahsildar,
Tiruppur North Division,
Tiruppur. .. Respondents

PRAYER:- Writ petition filed under Article 226 of the Constitution of India prays to issue a Writ of Certiorarified Mandamus, to call for the Records relating to the Impugned Notices of the 4th Respondent under Section:7 of the Tamil Nadu Land Encroachment Act, 1905 dated:28.03.2018 & quash the same and subsequently forbear the Respondents herein their Men, Servants, Subordinates and Agents from not to interfering the peaceful possession and enjoyment of the Petitioner's House Property and Land bearing Door Nos;21 & 21(2), Fire Service Workers Colony, Gandhi Nagar, situated in S.F.No.:339/1 of Chettipalayam Village, Tiruppur North Division, Tiruppur District.

For Petitioner :M/s.VA.VU.SI.Vazhakagam
For Respondents :Mr.A.N.Thambidurai, 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.A.N.Thambidurai, learned Special Government Pleader accepts notice on behalf of respondents.

2 The petitioners would state that they are in possession of the land in Survey No.339/1 bearing Door Nos.21 & 21(2), Fire Service Workers Colony, Gandhi Nagar, Tiruppur, admeasuring to an extent of 1200 sq.ft in No.4, Chettipalayam Village, Tiruppur North Division, Tiruppur District. It is further averred that the father of the 1st petitioner was in possession of the same. The petitioner and his brother had orally partitioned the said property and superstructure put up by them, is also subjected to statutory levies. It is further stated that the State Government had allotted unoccupied area in the said survey number to the Fire Service Department Personnel and thereafter, it was called as 'Fire Service Workers Colony'. The petitioners and other similarly placed persons are also trying to get Pattas and however, the respondent all of a sudden on 27.02.2003 had cancelled the Pattas granted in favour of the neighbours and a challenge was made by filing WP.No.10168/2003, which was allowed vide order dated 21.04.2003 and this Court, directed the concerned respondent to pass appropriate orders in accordance with law. It is further averred that the 4th respondent, came to their house on 10.03.2015 and subsequently, collected B-Memo charges and on enquiry, they came to know that the land in question is classified as 'Grama Natham' and as such, the provisions of the Tamil Nadu Land Encroachment Act, 1905 cannot be invoked. However, to their shock and surprise, having been issued with impugned notice dated 28.03.2018 under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, they made a challenge to the said notice by filing the present writ petition.

3 The learned counsel appearing for the petitioners has invited the attention of this Court to the typed set of documents and would submit that in the light of the overwhelming materials which would indicate that the land in question is classified as 'Grama Natham', the provisions of the Tamil Nadu Land Encroachment Act, 1905, cannot be invoked and prays for interference.

4 Per contra, Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents would submit that the writ petition is premature for the reason that the notice under Section 7 has to be followed by Section 6 notice

and thereafter further process would follow and would further submit that the petitioners are having alternate remedy under Section 10 of the above said Act and therefore, the present writ petition is liable to be dismissed.

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

6 It is relevant to extract Section 7 and 6 of the Tamil Nadu Land Encroachment Act, 1905:

"Section 6: Liability of person unauthorisedly occupying land to summary eviction, forfeiture of crops etc.- (1) Any person unauthorisedly occupying any land for which he is liable to pay assessment under section 3 or section 3-A may be summarily evicted by the Collector or subject to his control, by the Tahsildar or Deputy Tahsildar or any other officer authorised by the State Government in this behalf (hereinafter referred as the Authorised Officer) and any crop or other product raised on the land shall be liable to forfeiture and any building or other construction erected or anything deposited thereon shall also, if not removed by him after such written notice as the Collector or subject to his control, the Tahsildar or Deputy Tahsildar or authorised officer may deem reasonable, be liable to forfeiture. Forfeitures under this section shall be adjudged by the Collector or subject to his control by the Tahsildar, or Deputy Tahsildar, or authorised Officer and any property so forfeited shall be disposed of as the Collector or subject to his control the Tahsildar or Deputy Tahsildar or authorised officer) may direct.

(2) An eviction under this section shall be made in the following manner namely: By serving a notice in the manner provided in section 7 on the person reputed to be in occupation or his agent requiring him within such time as the Collector or the Tahsildar or Deputy Tahsildar or Authorised Officer may deem reasonable after receipt of the said notice to vacate the land, and, if such notice is not obeyed, by removing or deputing a subordinate to remove any person who may refuse to vacate the same, and if the officer removing any such person shall be resisted or obstructed by any person, the Collector or the Tahsildar, or Deputy Tahsildar or authorised officer shall hold a summary

inquiry into the facts of the case, and if satisfied that the resistance or obstruction was without any just cause and that such resistance or obstruction still continues, may issue a warrant for the arrest of the said person and on his appearance commit him to close custody in the office of the Collector or of any Tahsildar or Deputy Tahsildar or authorised officer for such period not exceeding 30 days as may be necessary to prevent the continuance of such obstruction or resistance or may send him with a warrant in the form of the schedule for imprisonment in the civil jail of the district for the like period.

Provided that no person so committed or imprisoned under this section shall be liable to be prosecuted under sections 183, 186 or 188 of the Indian Penal Code in respect of the same facts.

(3) Any authorised officer taking proceedings under this section shall make a report in writing containing such particulars as may be specified in rules or orders made under Section 8 to the Collector, Tahsildar or Deputy Tahsildar having jurisdiction.

Section 7: Prior notice to person in occupation: Before taking proceedings under section 6 the Collector or Tahsildar or Deputy Tahsildar or Revenue Inspector or any authorised officer or any other officer specified by the State Government in this behalf (not being an authorised officer) (hereinafter referred to as the 'specified officer as the case may be shall cause to be served on the person reported to be in unauthorised occupation of land being the property of Government a notice specifying the land so occupied and calling on him to show cause before a certain date why he should not be proceeded against under section 6.

Such notice shall be served in the manner prescribed in section 25 of the Tamil Nadu Revenue Recovery Act, 1864, or in such other manner as the State Government by rules or orders under Section 8 may direct.

Provided that no such notice shall be necessary in the case of any person unauthorisedly occupying any land, if he had been previously evicted from such land under section 6 or if he has previously vacated such land voluntarily after the receipt of a notice

under section 5-B or under this section:

Provided further that where the notice under this section is caused to be served by any Revenue Inspector or any specified officer he shall require the person reputed to be in unauthorised occupation of the land to show cause against such notice to the Collector, Tahsildar, Deputy Tahsildar or authorised person having jurisdiction, as the case may be and shall also make a report in writing containing such particulars as may be specified in rules or orders made under section 8 to the Collector, Tahsildar, Deputy Tahsildar or authorised person having jurisdiction, as the case may be".

7 In the light of the above said statutory provisions, it is obligatory and a mandate cast upon the 4th respondent to follow the due process of law under the said Act, and as and when, the notice under Section 6 has issued, it is open to the petitioners to submit a detailed response by enclosing relevant and authenticated documents to the 4th respondent and on receipt of the same, duly consider and pass appropriate orders in accordance with law and the said exercise is to be carried out within a period of ten weeks from the date of receipt of the representation/response and till such time, the possession of the petitioners in respect of the land in question shall not be disturbed. It is also made clear that till carrying out of the said exercise by the 4th respondent, the petitioners shall not create any third party right in respect of the site in question and shall not alter the physical features also.

8 With the above direction, the writ petition stands disposed of. No costs. Consequently connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

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To

1. The District Collector,
Tiruppur District,
Tiruppur.

2.The District Revenue Officer,
Tirupur District,
Tirupur.

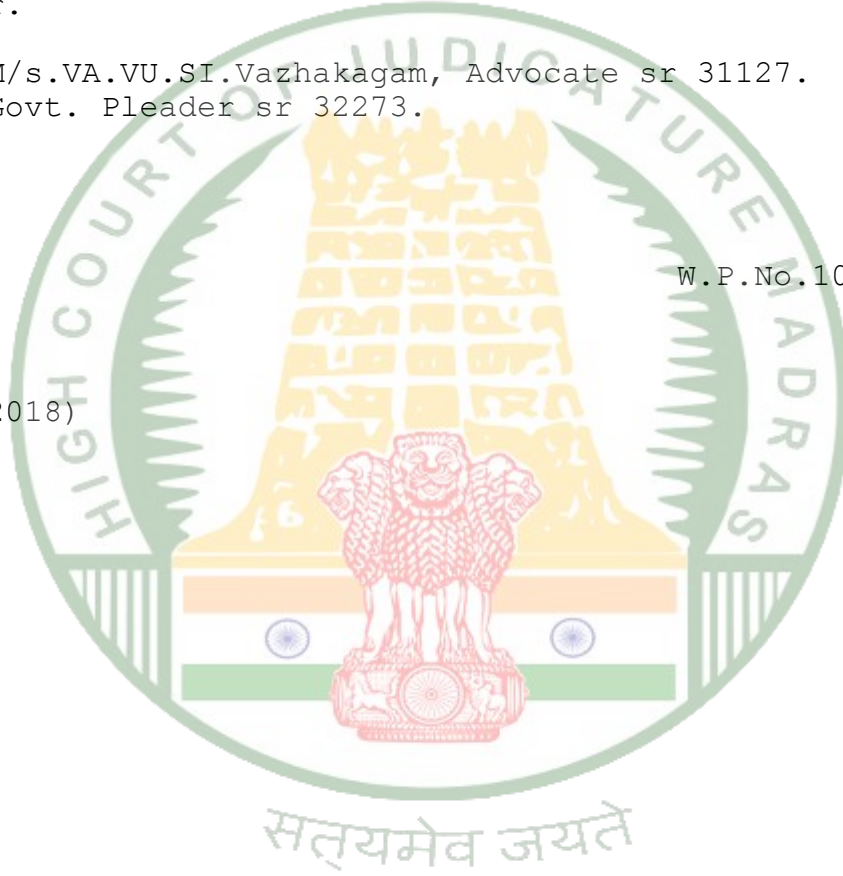
3.The Revenue Divisional Officer,
Tiruppur Revenue Division,
Tiruppur District,
Tiruppur.

4.The Tahsildar,
Tiruppur North Division,
Tiruppur.

+1 CC to M/s.VA.VU.SI.Vazhakagam, Advocate sr 31127.
+1 CC to Govt. Pleader sr 32273.

W.P.No.10828 of 2018

SP(06/06/2018)



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