

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.04.2018

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE P. RAJAMANICKAM

WP.No.7863 of 2018 and WMP.No.9814 of 2018

K.Pandurangan

.. Petitioner

Versus

1.The District Collector,
Thiruvallur District,
Office of the District Collector,
Collectorate,
Thiruvallur Town, Taluk and District.

2.The Commissioner,
Thiruvallur Municipality,
Thiruvallur District.

3.The Tahsildar,
Thiruvallur Taluk,
Office of the Tahsildar,
Thiruvallur Town Taluk and District.

.. Respondents

PRAYER:- Writ petition filed under Article 226 of the Constitution of India prays to issue a Writ of certiorarified Mandamus calling for the records of the 1st respondent passed in the impugned order Na.Ka.No.5075/2017/N 1 dated 15.03.2018, inasmuch as rejecting the request of the petitioner seeking for assignment or long-term lease of the land and thereon quash

the same and consequently forbearing the respondents from any manner interfering with the possession and enjoyment of the petition property comprised in Survey No.21/5, Perumbakkam Village, Thiruvallur Town and Taluk, land of an extent of acre 0.09 cents claiming the same to be well Puromboke.

For Petitioner : Mr.A.Palaniappan

For Respondents : Mrs.M.Lalitha, Government Advocate
for R1 & R3
Mrs.P.Kavitha, Government Advocate
for R2

ORDER

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

By consent, the writ petition is taken up for final disposal.

2. Mrs.M.Lalitha, learned Government Advocate accepts notice on behalf of respondents 1 and 3 and Mrs.P.Kavitha, learned Government Advocate accepts notice for 2nd respondent.

3. The petitioner claims that he is the owner of the land together with the building thereon, admeasuring to an extent of 54 ½ cents, comprised in Survey No.17/5A, situated in Perumbakkam Village, Thiruvallur Taluk and District. He would further aver that the land situated

in adjoining neighbouring lands comprised in Survey Nos.14/1 (part), 16/1, 16/2, 70/5 (part) 22/1, 28/2, and 28/3, were promoted as layout for the purpose of house sites and it has also been approved in Ma.Va/Na.Ue.No.869/91 and the said plots were sold and the purchasers had also put up superstructure on the said lands. The petitioner would further said that the land comprised in S.No.21/5 admeasuring to an extent of acre 0.09 cents abuts his Patta land on the Northern side. He has put up the compound wall covering the entirety of the property and in the said land, he is in possession and enjoyment of the same and prior to him, his father is in possession and enjoyment of the same for decades together.

4. The petitioner would further aver that action was sought to be initiated under the provisions of Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act,1975 and challenging the same, he filed WP.No.5355 of 2014 and the Division Bench of this Court vide order dated 22.04.2014, permitted him to respond to the notice under the said Act and further directed to dispose of the same within a stipulated time.

5. Mr.K.Pandurangan, learned counsel for the petitioner would submit that the 2nd respondent on an earlier occasion, passed an order dated 10.09.2014 in Na.Ka.No.0447/2014/F1, calling upon the petitioner to

vacate the land in question within a period of 15 days from the date of receipt of a copy of that order and challenging the same, the petitioner filed WP.No.25930 of 2014 and the Honorable First Bench vide order dated 18.01.2017, has directed the District Collector, Thiruvallur, to consider and dispose of the application submitted by the petitioner for assignment of the said land and without properly considering the purport of the order, the 1st respondent has erroneously rejected the said application vide impugned proceedings dated 15.03.2018 and further directed the concerned official respondents to take action for removal of encroachment.

6. It is the primordial submission of the learned counsel for the petitioner that since the land is continuously in possession of his forefather and that by way of succession, the petitioner is in possession and enjoyment of the land, which remains as vacant land and he has also put up a compound wall protecting the possession of the land, in all fairness, the Government either should have assigned the land granted to him on long lease or sold to him at the prevailing market price and though he has agreeable to any of the said course, the said request has not been specifically considered. Therefore, he is constrained to approach this Court to file this writ petition.

7. Mrs.P.Kavitha, learned Government Advocate appearing for the 2nd respondent would submit that as per the revenue records, the land is classified as "Well Poromboke" and as such it cannot be assigned in favour of anybody and admittedly the petitioner is the rank encroacher of the said land and therefore as a matter of right, he cannot claim assignment or long lease or sale in his favour, and the 1st respondent taken into consideration the factual aspects and relevant records has rightly rejected his request since he has encroached, and ordered the removal of encroachment by following due process of law and therefore prays for dismissal of this writ petition with costs.

8. This Court heard the submissions of Mrs.M.Lalitha, learned Government Advocate for R1 & R3 and Mrs.P.Kavitha, learned Government Advocate for R2.

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

10. A perusal of the impugned order dated 15.03.2018 passed by the 1st respondent would disclose that the order came to be passed based on the report of the Special Tahsildar, Land Tax Scheme as well as the 2nd

respondent and of course, an opportunity of hearing has also been afforded to the petitioner also.

11. In the considered opinion of this Court, the point urged by the learned counsel for the petitioner revolves around the adjudication of disputed question of fact and in the light of the stand taken by the learned counsel for 2nd respondent, that the land which is classified as Well Puromboke cannot be assigned, this court is of the considered opinion that the petitioner has to be afforded with an opportunity of filing as appeal before the Commissioner, Land Administration, Chepauk, Chennai-5, with a further direction to pass appropriate order in accordance with law, within a stipulated time.

12. This Court in the light of the above facts and circumstances and without going into the merits of the claim projected by the petitioner, grants liberty to the petitioner to file an appeal before the Commissioner, Land Administration, Chepauk, Chennai-5, within a period of four weeks from the date of receipt of a copy of this order by enclosing relevant and authenticated documents along with petition for stay and on receipt of the same, the said official shall entertain the petition for stay, if the papers are otherwise in order and take the petition for stay and give a disposal within a

period of three weeks from the date of entertainment the appeal petition. The Appellate Authority is also at liberty to give a disposal of the appeal, on merits and in accordance with law, within a period of ten weeks from the date of entertainment of the appeal. It is also made clear that till the disposal of the petition for stay by the appellate authority viz., the Commissioner, Land Administration, Chepauk, Chennai-5, the respondents 2 and 3 shall defer further decision to dispossess the petitioner from the land in S.No.21/5, admeasuring to an extent of acre 0.09 cents. It is also made clear that the writ petitioner, till the disposal of the appeal to be filed before the Commissioner, Land Administration, Chepauk, Chennai-5, shall not create any third party right in respect of the said land in question and shall not alter the physical features also.

13. With the above observation, the writ petition stands disposed of. No costs. Consequently connected miscellaneous petition is closed.

[M.S.N.,J] [P.R.M., J]
04.04.2018

Index : No
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M.SATHYANARAYANAN.,J.
and
P.RAJAMANICKAM.,J.

sk/rka

To

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