

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:06.03.2018

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

AND

THE HONOURABLE Mr. JUSTICE S.VAIDYANATHAN

W.P.No.4927 of 2018, and

W.M.P.No.6070 and 6071 of 2018

K.Mummurthi

... Petitioner

Vs.

- 1.The District Collector,
Thiruvannamalai District,
Thiruvannamalai.
 - 2.The Rural Development Officer,
Thiruvannamalai District,
Thiruvannamalai.
 - 3.The District Revenue Officer,
Thiruvannamalai District, Thiruvannamalai.
 - 4.The Block Development Officer,
Thiruvannamalai District, Thiruvannamalai.
 - 5.The Deputy Superintendent of Police,
Thiruvannamalai District, Thiruvannamalai.
 - 6.The Tahsildar,
Tahsildar Office, Kilpenathur Taluk,
Thiruvannamalai District.
 - 7.The Village Administrative Officer,
Annadampallam Village & Post,
Kilpenathur (TK),
Thiruvannamalai District.
- ..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records pertaining to the impugned order of the 4th Respondent herein passed in Information Letter in NA.KA.1711/2015/VOO.A3, dated 16.02.2018 and quash the same.

For Petitioner : Mr.Ravichandran
For Mr.K.Gangagadaran

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 Petitioner. Mr.A.N.Thambidurai, Learned Special Government Pleader takes notice for the Respondents. With the consent on either side, the Writ Petition is taken up for final disposal at the admission stage itself.

2.No counter affidavit is filed on behalf of the Respondents.

3.According to the Petitioner, he is residing in the Natham property bearing Survey No.163 for the past 60 years and only in the year 1996, the said survey number was declared as "Pattaiporamboke". Further, it was in occupation and possession prior to 1996 and the State Government had issued all the authority proofs viz., Ration Card, Voter ID, Adhaar Card etc. and that he paid the house tax and also having EB connection regularly. In the year 2010, the Tamil Nadu Government announced allotment of the Kalainar Housing Scheme (Kalainar Veduvazhangum Thettam) to issue eligibility card in Register No.2/192.

4.The stand of the Petitioner is that after the aforesaid allotment order, the Petitioner had not constructed the house. But, still he is residing and there are 10 houses living in nearby his house. The categorical stand of the Petitioner is that Survey No.163 is a Natham property before the year 1996 onwards and he along with his neighbours are in continuous possession and enjoyment of the property. The Respondents instead of declaring the road as

"Pattai" declared the entire survey No.163 as "Pattai Poramboke", without considering their right. The 6th Respondent had issued a notice dated 30.01.2017 through their proceedings and the Petitioner along with others on earlier occasion approached this Court in W.P.No.2048 of 2017 and the same was dismissed on 16.08.2017.

5.As per the order of this Court in W.P.No.2048 of 2017 dated 16.08.2017, the Petitioner appeared before the 1st Respondent and established his continuous enjoyment and possession of his respective properties for over 60 years. He is not encroached the Government property because of the reason that according to him, he was born in the said property etc. Now all his family members are also living with him and he does not have any other alternate land to take his family. He only depends on the said land and that the Respondents say that he had encroached. Further, the plea put forward by him is that there is no objection raised by the Government authorities for more than 60 years, but the 4th Respondent is very eager to remove him from the land in question. When that be the fact situation, to shock and surprise, the 4th Respondent issued a letter dated 16.02.2018 and the same was received by the Petitioner on 20.02.2017 at 3.00 p.m. along with his neighbours and asked them to remove the residential building etc. immediately before 21.02.2018.

6.The contention of the Learned Counsel for the Petitioner is that the Petitioner is paying property tax to the Government and he secured patta and the property is in enjoyment. Significantly, in para 8 of the affidavit, the Petitioner had stated that he filed the Appeal and the same is pending before the 1st Respondent/District Collector, Thiruvannamalai District. Since the Petitioner is aggrieved against the impugned order dated 16.02.2018, he has filed the present Writ Petition.

7.The principal plea taken by the Learned Counsel for the Petitioner is that the property in Survey No.163 is a Natham property prior to 1996 and the villagers are in occupation and further, the property in Survey No.163 was declared as "Pattai Poramboke" only during the year 1996 and that the Petitioner was in occupation and enjoyment of the property prior to 1996 and there is no encroachment on road only part of survey No.163 road is going to be declared the entire survey No.163 as "Pattai Poramboke" is illegal.

8.The Learned Counsel for the Petitioner points out that the Petitioner is using the property in survey No.163 as entry and the survey No.163 is commonly enjoyed by all villagers without making any obstruction or any hindrance to anyone and is encroachment on pathway and the excess lands were with the enjoyment of the individual villagers.

9.It is not in dispute that the Petitioner on earlier occasion filed W.P.No.2048 of 2017 along with other five persons also filed W.P.Nos.3066 to 3069 and 4622 of 2017. In fact, this Court, while passing a common order in W.P.No.2048 of 2017 etc. batch on 16.08.2017, at paragraph 4, had observed the following and dismissed the Writ Petition with observations mentioned therein.

"4.If the petitioners are so advised, they are at liberty to make a challenge to the impugned section 7 and section 6 Notices issued under the Tamil Nadu Land Encroachment Act, 1920, to the Appellate Authority under section 10 of the said Act, within a period of two weeks from the date of receipt of a copy of this order along with necessary documents and till the filing of appeals, the 3rd respondent shall defer further decision pursuant to the impugned notices dated 12.01.2017 and 30.01.2017 respectively, if not action already taken to remove the encroachment and if the papers are otherwise in order, the Appellate Authority, shall take the appeals on file and pass orders on merits and in accordance with law within a further period of six weeks thereafter and communicate the decision taken, to the petitioners herein. It is also made clear that till the entertainment and disposal of the Appeal petitions, the writ petitioners shall not create any third party rights in respect of the properties/lands in question or alter the physical features of the properties/ lands also."

10.As on date, it appears that the Petitioner has not preferred any Appeal and in this regard, the Learned Counsel for the Petitioner informs this Court that the Petitioner will file an Appeal in a day or two. Even though the Petitioner in the present Writ Petition at paragraph 8 of the Affidavit, had, in a crystalline fashion, mentioned that the Appeal was preferred and the same is pending before the 1st Respondent under Section 10 of the Tamil Nadu Land Encroachment Act, 1905, the fact of the matter is that the Petitioner is not able to produce any proof that he had preferred the Appeal under Section 10 of the Tamil Nadu Land Encroachment Act. Adequate opportunity and enough time was provided to the Writ Petitioner in the earlier common order passed by this Court in W.P.No.2048 of 2017 in which the present Writ Petitioner is figured as Petitioner and when this Court had directed the Petitioner to prefer an Appeal to assail the correctness of the order passed by the appropriate authority in W.P.No.2048 of 2017 and till such time, the 3rd Respondent therein viz., the Tahsildar, Kilpennathur Taluk, Thiruvannamalai District was directed to defer further decision pursuant to the impugned notices dated 12.01.2017 and 30.01.2017 respectively etc., then, this Court is of the earnest opinion that it is not open to the Petitioner to now put forward a plea that before this Court that he will prefer the Appeal in a day or two. If the Petitioner is permitted to file an Appeal in a day or two as informed by the Learned Counsel for the Petitioner, then, the earlier opportunity provided to the Petitioner by the Division Bench of this Court dated 16.08.2017 in W.P.No.2048 of 2017 will get nullified and the earlier order will only turn out to be a nugatory one in the eye of Law.

11.This Court is of the view that when the Petitioner has not produced any proof to exhibit before this Court that he had preferred an Appeal against the impugned notices earlier on 12.01.2017 and 30.01.2017 respectively, then, it is not open to him to turn around and take contra plea that he will now file the Appeal with a delay Condonation Petition before the competent authority. The very fact that the Petitioner has not availed the opportunity provided to him earlier to prefer an Appeal and when this Court in W.P.No.2048 of 2017 had categorically pointed out and directed the 3rd Respondent/Tahsildar, Kilpennathur Taluk, Thiruvannamalai District to defer further decision pursuant to the impugned notices 12.01.2017 and 30.01.2017, then, it can only be construed in Law that the Petitioner has waived his right to prefer an Appeal before the 1st

Respondent/District Collector in the eye of Law.

12. In short, the plea taken on behalf of the Petitioner is that he will be filing an Appeal in a day or two cannot be accepted by this Court and the earlier order passed by this Court stands against him and now the Petitioner cannot regale out of the situation/ predicament that he is in. Moreover, this Court, on a cursory look of the impugned order dated 16.02.2018 issued by the 4th Respondent /Block Development Officer, Thiruvannamalai District, is of the considered view that the authority had rightly mentioned that the time granted to the Petitioner already got expired and in fact, in Reference No.1 of the Impugned order/notice dated 16.02.2018, a reference was made to the common order in W.P.No.2408 of 2017 dated 16.08.2017 (filed by the Petitioner earlier) and suffice it for this Court to point out that the said order does not suffer from any legal infirmity, material irregularity or patent illegality in the eye of Law. Viewed in that perspective, the Writ Petition is devoid of merits.

13. Dealing with the plea of the Petitioner that the Natham Property does not belong to the Government, it is to be pointed out that the Division Bench of this Court in the decision Zonal Officer - V, Corporation of Chennai, Chennai and another V. K.Narasa Reddy, Kances Constructions Private Limited, Chennai and others, (2012) 4 MLJ 646 [where one of us M.V.J. is a Member] wherein at special page 652 at paragraph 17, had observed the following:

"17. The pathetic situation prevailing in this part of the globe, as we observed is that, ignoring the fact that Gramanatham land is a common village land, the greedy persons like the writ petitioner in this case are indulging in activities, which are purely commercial in nature. When the appellants themselves have accepted in all fairness that patta has been issued erroneously and that they have initiated necessary proceedings to cancel the same, we are unable to find fault with the impugned action initiated necessary proceedings to cancel the same, we are unable to find fault with the impugned action initiated by the appellants herein. This rampant practice

of misusing the Gramanatham lands in this part of the globe has to be curtailed immediately, so as to protect the common village lands for the welfare of the public in general. Therefore, the Government of Tamil Nadu and its revenue officials are directed to strictly protect the Gramanatham lands from being misused, particularly for commercial purposes."

14.It is to be noted that the payment of electricity card charges, possessing Adhaar card, I.D. Card etc. will not confer any vested right on the Petitioner to sit or squat on the property especially on the Government property over which he lays a claim and also that he is not the owner of the property.

15.In regard to the plea of Equity taken by the Petitioner, it is to be pointed out that an 'Encroacher' or a 'Violator' of Law cannot take the plea of Equity, since the person who seeks 'Equity' must do 'Equity' and also must come to Court with clean hands.

16.In fine, the Writ Petition is dismissed, leaving the parties to bear their own costs. Before parting with the case, this Court points out that if for any reason, the Appeal had been filed by the Petitioner against the order in W.P.No.2408 of 2017 dated 16.08.2017 and if it is pending, then, it is open to the authorities concerned to consider the said Appeal on merits, after providing opportunity to the Petitioner, Complainant and others if any and to dispose of the same in accordance with Law. Consequently, connected Miscellaneous Petitions are also dismissed.

-s/d-

Assistant Registrar

True Copy
WEB COPY

Sub-Assistant Registrar

Sg1

To

- 1.The District Collector,
Thiruvannamalai District,
Thiruvannamalai.
- 2.The Rural Development Officer,
Thiruvannamalai District,
Thiruvannamalai.
- 3.The District Revenue Officer,
Thiruvannamalai District,
Thiruvannamalai.
- 4.The Block Development Officer,
Thiruvannamalai District, Thiruvannamalai.
- 5.The Deputy Superintendent of Police,
Thiruvannamalai District, Thiruvannamalai.
- 6.The Tahsildar,
Tahsildar Office, Kilpenathur Taluk,
Thiruvannamalai District.
- 7.The Village Administrative Officer,
Annadampallam Village & Post,
Kilpenathur (TK),
Thiruvannamalai District.

+1 CC to Government Pleader, High Court, Chennai Sr.No.17427

सत्यमेव जयते

W.P.No.4927 of 2018

SVI (CO)
KP (12/04/2018)

WEB COPY