

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.07.2018

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

WP.No.1098/2018 & WMP.Nos.1332 & 8034/2018

V.Chandrasekar

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Petitioner

Versus

1 The District Collector
Kancheepuram District.2 The Tahsildar
Maduranthagam Taluk
Kancheepuram District.3 The Revenue Inspector
Acharapakkam,
Maduranthagam Taluk
Kancheepuram District.

Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records pertaining to the impugned proceedings dated 12.10.2017 vide Na.Ka.2930/2017/A3 issued by the 3rd respondent, quash the same and direct the 2nd respondent to assign the lands in Survey no.56/1B2/2 measuring about 5 acres in the Elapakkam Village, Maduranthagam Taluk, Acharapakkam Division, Kancheepuram District in favour of the petitioner as per the present representation dated 25.10.2017.

For Petitioner

:

Mr.V.Manohar

For R1 to R3

:

Mr.R.Udhayakumar, AGP

ORDER

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

By consent, the writ petition is taken up for final disposal. Mr.R.Udhayakumar, learned Additional Government Pleader appears on behalf of the respondents 1 to 3.

2 The petitioner would state that his family is in possession of the land admeasuring to an extent of 5 acres in S.No.56/1B2/2 at Elapakkam Village, Maduranthagam Taluk, Kancheepuram District for over 70 years, wherein agricultural operations are going on and 2A patta has also been granted recognising their long possession and occupation and statutory levies have also been collected. The petitioner would further aver that his father, viz., M.Venugopal Naicker, is an Ex-Serviceman and he has given representation for issuance of patta and for the reasons best known, the application is kept pending for very many years and the petitioner after succeeding to the estate of his father, has also given repeated representations for grant of patta in respect of the said land in question. The petitioner also avers that to his shock and surprise, he was issued with a notice u/s.7 of the Tamil Nadu Land Encroachment Act, 1905, dated 12.10.2017 by the Revenue Inspector, Acharapakkam, Maduranthagam Taluk, Kancheepuram

District and in response to the same, the petitioner has submitted a detailed representation on 25.10.2017 by enclosing all relevant and authenticated documents, pointing out the long possession and enjoyment and also the pendency of the request for issuance of patta and therefore, prayed for dropping of all further proceedings under the provisions of the Tamil Nadu Land Encroachment Act, 1905, with a further prayer to grant patta in respect of the land in question. The petitioner, apprehending dispossession pending consideration of the representation, came forward to file the present writ petition.

3 The writ petition was entertained on 18.01.2018 and vide order dated 09.02.2018, the respondents was directed to consider the petitioner's representation and pass appropriate orders. Further, this Court, vide order dated 13.04.2018, also granted interim protection from eviction/dispossession.

4 The 2nd respondent has filed a Status Report and took a stand that the petitioner had encroached upon the Government land admeasuring to an extent of 1.20.0 hectares in S.No.56/1B2/2 of the said village which is classified as "Grazing Poramboke" [Meikkaal poramboke] and the encroachment is highly objectionable and action

has been initiated under the provisions of the Tamil Nadu Land Encroachment Act, 1905, for which, the petitioner cannot make a complaint and prays for dismissal of the writ petition.

5 The 2nd respondent has also filed a counter affidavit taking the very same stand.

6 In response to the same, the petitioner has filed his objections reiterating his stand taken in the present writ petition and would further aver that pendency of the proceedings, he has also been issued with the notice under section 6 of the said Act dated 02.03.2018 and despite a positive order of ad-interim direction dated 09.02.2018, to consider his representation submitted in response to the notice issued u/s.7 of the Act and without considering the same, in a routine manner, notice u/s.6 came to be issued and therefore, prays for interference with a further direction, directing the concerned respondent to consider his request for issuance of patta.

7 ***Per contra,*** Mr.R.Udhayakumar, learned Additional Government Pleader appearing for the respondents would submit that since the petitioner is having an effective alternate remedy u/s.10 of the

Tamil Nadu Land Encroachment Act, 1905, and further, the points urged by the learned counsel for the petitioner also revolve around adjudication of disputed questions of fact, this Court may not interfere with the proceedings initiated under the said Act and prays for dismissal of this writ petition.

8 It is relevant to extract sections 10 and 10-B of the said Act:-

"Section 10:- *An appeal shall lie [a] to the Collector from any decision or order passed by a Tahsildar or Deputy-Tahsildar [or an authorised officer] under this Act, and [b] to the District Collector from any decision or order passed otherwise than on appeal, and [c] to the Board of Revenue from any decision or order of a District Collector otherwise than on appeal.*

Section 10-B:- Pending disposal of any appeal or application or proceedings for revision under this Act, the Collector, the District Collector, the Board of Revenue, or the State Government, as the case may be, may by order, and subject to such conditions as may be specified therein, stay the execution of the decision or order appealed against or sought to be revised."

9 This Court, taking into consideration the above facts and

circumstances and without going into the merits of the claim of the petitioner, permits the petitioner to file an appeal challenging the legality of section 6 notice dated 02.03.2018, along with the petition for stay to the 1st respondent, by enclosing all the relevant and authenticated documents within a period of four weeks from the date of receipt of a copy of this order and the 1st respondent shall entertain the appeal, if the papers are otherwise in order and the said Appellate Authority or the delegated official, shall take up the petition for stay and give a disposal on merits and in accordance with law within a period of two weeks from the date of entertainment of the appeal. It is also open to the 1st respondent / the delegated official to take up the main appeal itself and give a disposal on merits and in accordance with law within a period of eight weeks from the date of entertainment of the appeal and till such time, the respondents 2 and 3 shall defer further decision in terms of the notices issued u/s.7 and 6 of the Tamil Nadu Land Encroachment Act, 1905 dated 12.10.2017 and 02.03.2018 respectively. It is also made clear that the petitioner, till the disposal of the appeal by the Appellate Authority/delegated official, shall not create any third party rights in respect of the land in question and shall also not alter the physical features of the same.

10 The writ petition stands disposed of with the above direction. No costs. Consequently, connected miscellaneous petitions are closed.

[MSNJ] [GKIJ]
06.07.2018

Internet : Yes
AP

To

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M.SATHYANARAYANAN, J.,
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