

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.1540 of 2016

V.Srinivasan

..Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep.by The Special Commissioner & Commissioner,
Land Administration, Chepauk,
Chennai - 600 005.
- 2.The District Collector,
Office of District Collectorate,
Singaravelar - Maligai,
Chennai - 600 001.
- 3.The District Revenue Officer,
Division -8, Chennai Corporation,
No.117, N.S.K.Salai, Kodambakkam,
Chennai - 600 024.
- 4.The Tahsildar,
Office of the Tahsildar,
Mambalam, Guindy Taluk Office,
Chennai - 600 078.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents herein to dispose of the petitioner's representation dated 05.02.2015 within a stipulated time frame.

For Petitioner : Mr.M.Ezhilarasan

For Respondents : Mrs.A.Srijayanthi
Special Government Pleader for R1, 2 & 4
No appearance for R3

O R D E R

The relief sought for in this writ petition is for a direction to the respondents to dispose of the petitioner's representation dated 05.02.2015, within a stipulated time.

2. The petitioner states that he is in possession and enjoyment of the land, which is classified as "Circar Poromboke". The writ petitioner himself in his representation dated 05.02.2015 admitted the fact that the land was classified as "Natham Poromboke". The writ petitioner has made a representation to provide basic amenities and no action has been taken by the authorities to provide the amenities to the writ petitioner, who is in possession and enjoyment of the property in Survey No.37/39, situated at No.21, South Sivan Koil Street, Vadapalani, Chennai -26, measuring to an extent of 5511 sq.ft. The writ petitioner further states that he is in possession and enjoyment of the land for more than ten years and therefore, patta is to be granted in his name. In other words, the petitioner claims patta based on the fact that he is in possession of the land which is classified as "Circar Poromboke" in the revenue records. The respondents have not considered the representation of the petitioner, hence, the writ petitioner is constrained to move the present writ petition.

3. The learned Special Government Pleader appearing on behalf of the respondents 1, 2 and 4 made a submission that in respect of G.O.Ms.No.854, Revenue 1(2) Department, dated 30.12.2006, provided one time relief to the poor land less people and therefore, the said Government order cannot be extended to the writ petitioner. This apart, the writ petitioner is an encroacher and therefore, patta cannot be granted in his favour, in respect of the land which is classified as "Circar Poromboke". Though the Tahsildar filed an affidavit stating that the land is classified as "Circar Poromboke" where the writ petitioner is in possession and enjoyment of the same, no action has been taken to evict the encroachments in respect of the Government lands.

4. The attitude of the respondents in this regard deserves to be condemned and the officials who are all in charge of the Government lands must be vigilant in protecting the same. In the event of any lapses or collusion, the authorities liable are to be prosecuted and suitable disciplinary proceedings are also to be initiated against such officials, who have committed an act of negligence and dereliction in duty in protecting the

Government lands and the Government properties. Mere possession and enjoyment for a considerable length of time, would not constitute a right for an encroacher to seek patta and to continue in the encroached property. Thus the respondents are bound to initiate appropriate action under the provisions of the Tamil Nadu Land Encroachment Act, to evict all such encroachments made in the Government lands.

5. This Court would like to express its languish in respect of inaction on the part of the Government officials against the encroachers. The Government lands are meant for the welfare and interest of the public at large. Contrarily, the Government officials are acting otherwise in respect of the encroached lands belong to the Government by some persons for their personal gains and on extraneous considerations. Thus, there is a large scale collusion in respect of such encroachments in the urban areas and the District Collector in this regard is bound to conduct periodical review meeting and ascertain the extend of encroachments and issue suitable orders to the Subordinate officials to ensure that action is taken without any further delay. In the event of any lapses or lacuna on the part of the Subordinate officials in initiating action against all such encroachments, suitable actions are to be taken by the District Collector against all such revenue officials and other officials, who have committed an act of negligence, dereliction of duty or any other illegality. The land grabbing in urban area are considerably increasing on account of the increase of value of lands in urban areas.

6. Under these circumstances, it is the duty mandatory on the part of the officials to ensure that the Government lands and the public lands are protected in all respects. Contrarily, they are witnessing such encroachments and failing in their duty to initiate appropriate action in accordance with law. All such wrongful actions of the officials are to be construed not only as lapse, it should be construed as collusion and appropriate actions are to be initiated against the officials concerned. The District Collector is bound to conduct periodical meetings and direct the officials to take action and submit a report to the District Collector for protecting the Government lands and other public properties.

7. In the present case on hand, the Tahsildar, Mambalam Taluk himself admitted the fact that the land in question is classified as "Circar Poromboke and the field inspection was conducted by the Tahsildar. At the time of conducting field inspection, it was found that the writ petitioner is in possession and enjoyment of the property and running a business.

Such being the factum ascertained by the Tahsildar, while conducting field inspection, this Court, is unable to understand, why the Tahsildar has failed to initiate appropriate action under the provisions of the Land Encroachment Act to ensure that the Government land is protected. Contrarily, they are witnessing such encroachments and showing insensitiveness in respect of protecting the Government lands. Such an attitude of the officials are to be deprecated and the District Collector shall initiate appropriate action against the fourth respondent in this regard, if there is any lapses or dereliction of duty.

8. In respect of the relief as such sought for in this writ petition, to direct the respondents to consider the representation, the writ petitioner has to establish a legal right. In the absence of establishing any legal right, even a direction, to consider the representation cannot be granted. In view of the fact that the fourth respondent has filed a counter affidavit stating that the writ petitioner is an encroacher and the land in question is classified as "Circar Poromboke", this Court is not inclined to consider the relief as such sought for in this writ petition. Accordingly, the respondents are directed to initiate appropriate action against the encroachments in that locality, by following the procedures contemplated under the Tamil Nadu Land Encroachment Act and in this view of the matter, this writ petition stands dismissed as being devoid of merits. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1.The Special Commissioner & Commissioner,
The State of Tamil Nadu,
Land Administration, Chepauk,
Chennai - 600 005.

2.The District Collector,
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4.The Tahsildar,
Office of the Tahsildar,
Mambalam, Guindy Taluk Office,
Chennai - 600 078.

+lcc to Mr.M.Ezhilarasan, Advocate sr.no.55988
+lcc to Government Pleader sr.no.56829

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nr 12/09/2018



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