

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:03.01.2018

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

AND

THE HONOURABLE Mr. JUSTICE S.VAIDYANATHAN

W.P.No.34021 of 2017 and

W.M.P.No.37737 of 2017

P.Devan

.. Petitioner

Vs.

1.The Collector of Tiruvallur,
Tiruvallur District.

2.The Sub-Collector of Tiruvallur,
Thiruvallur District.

3.The Tahsildar,
Thiruvallur District.

4.Mrs.Fathima

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the first respondent to consider the petitioner representation dated 20.10.2017 and remove all the encroachment situate in an extent of 12.25.0 Hectares Lake area comprised in Survey No.106/2 at Vedanginallur, Tiruvallur District as per the 1st respondent order dated 05.08.2015 in Na.Ka.No.18058/2015/N1.

For Petitioner : Mr.R.Karunagaran

For RR 1 to 3 : 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 Respondents 1 to 3.

2.The Petitioner has filed this present Writ Petition praying for passing of an order by this Court in directing the 1st Respondent to consider his representation dated 20.10.2017 and to remove all the encroachment situate in an extent of

12.25.0 Hectares Lake area comprised in Survey No.106/2 at Vedanginallur, Tiruvallur District as per the 1st Respondent order dated 05.08.2015 in Na.Ka.No.18058/2015/N1.

3. According to the Petitioner, he has been in possession of the lands viz., 30 cents comprised in Survey No.569/2 at Vedanginallur, Siruvanoor Village, Tiruvallur District and also in possession of 10 acres of poramboke land comprised in Survey No.106 at Vedanginallur, Siruvanoor Village, Tiruvallur District. He is in possession of the aforesaid lands and cultivating paddy and green gram. According to him, he is in possession and enjoyment of the said lands for the past 22 years and likewise, more than 100 persons are occupying the lands and cultivating the same.

4. The specific case of the Petitioner is that he is using the 10 acres of poramboke land for getting access to his land as Vandipattai and thrashing floor and also that, the adjacent owners are using the thrashing floor in common. Further, he had spent about Rs.25,000/- for reclamation of the suit property.

5. The Learned Counsel for the Petitioner submits that the 4th Respondent is the Petitioner's brother's wife and there are properties at Pullambakkam Village and at Varadaraj Nagar, Tiruvallur and at Mosur Road, Arakkonam in the name of the 4th Respondent's husband, which are of joint family and that he had demanded partition. As such, the 4th Respondent's husband had developed enmity and that on 07.02.2008, they had assaulted and threatened to dispossess him from the property in question. A police complaint was lodged by the Petitioner against the Respondents before the Taluk Police, Tiruvallur and a receipt was issued in CSR No.28/2008.

6. Advancing his arguments, the Learned Counsel for the Petitioner submits that the Petitioner made a representation on 19.01.2009 before the 1st Respondent to restrain the 4th Respondent's husband from interfering with the Petitioner's peaceful possession and enjoyment of the property. However, no action was taken against the 4th Respondent's husband by the 1st Respondent. Therefore, the Petitioner was forced to file W.P.No.8003 of 2015 wherein the 1st Respondent was directed to consider the representation of the Petitioner dated 12.01.2015 from evicting the Petitioner from the lands measuring an extent of 10 acres of Poramboke land comprised in Survey No.106 at Vedanginallur, Siruvanoor Village, Tiruvallur District. On 22.04.2015, this Court had directed the 1st Respondent to consider the Petitioner's representation dated 12.01.2015, after providing an opportunity of hearing to all the concerned parties on merit and take decision in accordance with law, if the encroachment is found and if there is no protection under any

judicial proceedings, the authorities are at liberty to take enforcement action as per Law.

7. In this connection, the Learned Counsel for the Petitioner brings it to the notice of this Court that the 1st Respondent, pursuant to the order passed by this Court dated 22.04.2015 in W.P.No.8003 of 2015, had conducted an enquiry and passed an order on 05.08.2015 and rendered a finding that at the time of enquiry, the Petitioner and the 4th Respondent's husband had not produced any documents and village accounts were considered in respect of Field No.106/3 and total extent of 12.25.0 hectares was categorised as Lake frontage and considered as water poramboke land and there is no rules to give assignment and hence, directed the 2nd Respondent to cancel the B Memo and take precautionary method preventing the Petitioner and the 4th Respondent's husband from cultivating the land and if they do so, a case was ordered to be registered against them before the Police and the 3rd Respondent was directed to initiate action.

8. It comes to be known that if the 4th Respondent's husband filed a suit in O.S.No.370 of 2008 as Plaintiff without arraying the 1st Respondent, who is the owner of the property and obtained an injunction against the Petitioner. Taking advantage of the said proceedings, after the demise of her husband, the 4th Respondent had now attempted to cultivate the said land and preferred a complaint with the Police not to interfere with her illegal agricultural activities.

9. The primordial plea taken on behalf of the Petitioner is that once the 1st Respondent had passed an order on 05.08.2015 that an entire area of 12.25.0 hectares Lake internal part comprised in Survey No.106/2 and ordered eviction the 4th Respondent and others cannot continue the agricultural activities illegally. Therefore, the Petitioner had made a representation before the Respondents on 20.10.2017 and till date, no action has been taken so far. Hence, the Petitioner has filed the present Writ Petition.

10. In view of the crystalline fact that the Plaintiff in O.S.No.370 of 2008, the husband of the 4th Respondent had obtained a Judgment and Decree against the Petitioner, who figured as Defendant in the said Suit on 04.03.2017 and that Judgment and Decree when they have become final, conclusive and binding between inter se parties, then, this Court is of the considered view that it is not open to the Petitioner to file a present Writ Petition seeking for issuance of Mandamus to be issued to the 1st Respondent to consider his representation dated 20.10.2017 and remove all the encroachments found in an extent of 12.25.0 hectares Lake area comprised in Survey No.106/2 at Vedanginallur, Tiruvallur District as per the 1st Respondent

order dated 05.08.2015 in Na.Ka.No.18058/2015/N1.

11.To put it succinctly, when the Judgment and Decree dated 04.03.2017 have become final, conclusive as stated supra between the parties, then, the Judgment and Decree which binds the Petitioner as an inter se party to the said judicial proceedings now operates against the Petitioner and therefore, the relief sought for by the Petitioner in the present Writ Petition to consider his representation dated 20.10.2017 is only an otiose one and further, the same is not acceded to by this Court. Viewed in that perspective, the Writ Petition fails.

12.In fine, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed. Before parting with the case, the dismissal of the Writ Petition will not preclude the Writ Petitioner to seek appropriate remedy before the Appellate Authority as against the Judgment and Decree passed in O.S.No.370 of 2008, of course, in the manner known to Law and in accordance with Law, if he so desires/advised.

Sd/-

Assistant Registrar(CS V)

//True copy//

Sub Assistant Registrar

Sgl

To

- 1.The Collector of Tiruvallur,
Tiruvallur District.
- 2.The Sub-Collector of Tiruvallur,
Thiruvallur District.
- 3.The Tahsildar,
Thiruvallur District.
- 4.The Government Advocate,
High Court, Madras.

+1cc to Government Pleader SR.No.455

W.P.No.34021 of 2017

GN(25/01/2018)