

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 19.11.2018

Orders Pronounced on : 19.12.2018

Coram:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

W.P.No.12531 of 2018
and
W.M.P.No.14672 of 2018

M.A.Moorthy ... Petitioner

Vs.

1. Executive Engineer,
Metropolitan Transport Project (Railways),
Mylapore, Chenna-600 004.
2. Tahsildar, Velachery Taluk,
Velachery, Chennai-600 042.
3. Joint Commissioner of Police,
Adyar Range, Chennai-600 020.
4. S.Saroja
5. S.Selvam
6. S.Harikrishnan
7. The District Collector,
Office of the District Collector,
Chennai-600 001.

(Seventh Respondent impleaded,
vide Court Order dated 30.10.2018 made
in W.M.P.No.33788 of 2018 in
W.P.No.12531 of 2018)

... Respondents

WEB COPY

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records of the first respondent in Proceedings No.RLY:21011, dated 09.05.2018 and quash the same as illegal, arbitrary and non-est in law.

For petitioner : Mr.B.Vijay
For respondents: Mr.P.T.Ramkumar for R-1
Mr.S.N.Parthasarathy, Govt. Advocate
for RR-2, 3 & 7
Mr.D.Kumaralingam for RR-4 to 6

ORDER

R.SUBBIAH, J

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Certiorari to call for the records of the first respondent in Proceedings No.RLY:21011, dated 09.05.2018 and quash the same as illegal, arbitrary and non-est in law.

2. In and by the said order, dated 09.05.2018, the first respondent directed the petitioner to remove the land encroached illegally put up by him in S.No.333 within ten days, as the said land was allotted to Railways, failing which, the Railway Administration will take necessary steps to remove the encroachment and take possession of the land allotted to MRTS, vide G.O.No.510, Revenue Na.Mu.4(2) Department, dated 01.09.2005 for providing facilities to the public.

3. The case of the petitioner is that the lands comprised in Survey No.317/1, presently T.S.No.2, Block No.192 of Velacherry Village, Mambalam-Guindy Taluk, VOR Station Road, Bhuvaneshwari Nagar Layout, Chennai District, were originally owned and possessed by one Mr.G.Subramani, by virtue of a Registered Sale Deed, dated 05.03.1985, vide Doc.No.554 of 1986, registered on the file of SRO, Saidapet. The said Subramani derived absolute title to the lands and he was in peaceful enjoyment and effective possession of the same. He has also obtained electricity connection for the said property and has duly paid all Revenue dues on the said property, which includes water tax, sewage tax and property tax, among other statutory levies. The said Subramani has settled a portion of the property to and in favour of his wife Mrs.Saroja under Settlement Deed, dated 10.11.2003, vide Document No.4849 of 2003 on the file of the SRO, Velacherry. The said Saroja in turn, has settled the land ad-measuring an extent of 6,293 Sq.Ft. in favour of her son, Mr.S.Selvam under Settlement Deed, dated 19.02.2007, registered as Document No.675 of 2007 on the file of the SRO, Velacherry. The said Mr.Selvam had sold the subject lands ad-measuring an extent of 6,293 Sq.Ft. in favour of one Mr.M.Soniappan and Mr.G.Vasanth, vide Sale Deed, dated 09.05.2007, registered as Document Nos.2140 of 2007 and 2141 of 2007 respectively, on the file of the SRO, Velacherry. The abovesaid buyers have appointed one Mr.D.Elumalai as Power Agent to deal with their property under Power of Attorney Deed, dated 09.05.2007,

registered as Document Nos.1299 of 2007 and 1298 of 2007 respectively. The Power Agent has conveyed the said property in favour of G.Subramani under registered Sale Deed, dated 27.05.2008.

4. It is the further case of the petitioner that the said Subramani was in absolute possession and enjoyment of the subject land without any let or hindrance. While that being so, the said Subramani died intestate on 22.05.2016, leaving behind his wife Saroja and his children, S.Selvam, S.Harikrishnan and S.Manikandan, as his sole legal heirs to succeed his Estate(s). The petitioner herein had entered into a tenancy agreement with the aforesaid owners of the property to carry on the business of Fish market under the name and style of Soorya Fish Market and accordingly he had been inducted into the possession of the property to carry on the business.

5. The abovesaid owners of the property had appointed Power Agent to deal with their property under General Power of Attorney Deed, dated 25.09.2017, vide Document No.5997 of 2017. The petitioner had negotiated with the owners and the said Power Agent to purchase the said property in order to effectively carry on the business. Accordingly, the petitioner had entered into a Sale Agreement with the owners of the said property through their Power Agent by and under a registered Sale Agreement dated 26.09.2017. The petitioner had obtained licence to operate the said business of Fish market in the subject property and in the course of the said transaction for the sake of convenience, the owners have let out the property to various tenants with the consent of the petitioner.

6. The subject property is comprised in S.No.317/1 of Velacherry Village, which is adjacent to Chennai Silks building at Velacherry. While the things stood thus, to the petitioner's shock and surprise, the petitioner received the impugned notice, dated 09.05.2018 which was served on 11.05.2018 issued by the first respondent calling upon the petitioner to vacate the subject lands within a period of ten days. In the said impugned notice, it is stated that in W.A.No.687 of 2018 filed by Annai Indira Gandhi Hut Dwellers Welfare Association against the judgment in W.P.No.12383 of 2004, a sketch prepared by the Deputy Inspector of Survey and Land Records, Velacherry Taluk, after the inspection conducted by him along with the Revenue Officials, had been filed indicating that the petitioner had encroached in S.No.333 for an extent of 0.18 acres. It is further stated in the said impugned notice that based on the affidavit filed by the Railways, this Court, by order dated 28.04.2018 made in Writ Appeal No.687 of 2018, permitted the Railway Department to remove the encroachment made in S.No.333 and the first respondent had issued the eviction notice on the premise that the

petitioner had encroached upon a portion of the Government land comprised in S.No.333 and by placing reliance upon the sketch furnished by the Revenue Official.

7. It is the further stand of the petitioner that the impugned eviction notice was issued by the first respondent without conducting any proper enquiry on material factual aspects, and hence, the same is vitiated by arbitrariness and passed on total non-application of mind. The Fish market is located in S.No.317/1 and not in S.No.333 as stated in the impugned notice. The sketch alleged to have been prepared by the Deputy Inspector of Survey and Land Records indicated that the subject lands fall under S.No.333, which is contrary to Town Survey Record and Block Map maintained by the Survey Department. The alleged inspection conducted by the Revenue Official in the absence of the petitioner is nothing but farce and the land owners have perfected title upon the lands comprised in S.No.317/1 by virtue of registered instruments. The conclusion of the first respondent that the petitioner is in occupation of the Government land and not private land, is erroneous and reflects malice in law. The petitioner herein is not a party to Writ Appeal No.687 of 2018 and W.P.No.12383 of 2004 filed by Annai Indira Gandhi Hut Dwellers Association.

8. It is the further case of the petitioner that the first respondent has not issued any eviction notice to the land owners and tenants who are in occupation of the subject property. The owners of the subject lands have been arrayed as respondent Nos.4 to 6 herein. The Fish market is situated in private lands which is evident from the Master Plan of the CMDA. The first respondent and Revenue Officials, on 13.05.2018, had attempted to enforce the eviction notice even before the expiry of the time granted for vacating the place as per the impugned notice. Hence, for these reasons, the petitioner has filed the present Writ Petition for the relief stated supra.

9. When the Writ Petition is taken up for consideration, learned counsel for the petitioner mainly submitted that the Fish market has been established in S.No.317/1, but the case was projected by the respondents as if the Fish market is located in S.No.333. In fact, before issuing the impugned notice, the Deputy Inspector of Survey and Land Records, Velacherry Taluk, had not conducted any inspection as alleged in the impugned notice, but the said notice was issued based upon the incorrect and false sketch prepared by the Deputy Inspector of Survey and Land Records, Velacherry Taluk. In fact, this Court, by order dated 28.04.2018 in Writ Appeal No.687 of 2018, directed the Railways to proceed with the removal of encroachment made in S.No.333 in accordance with law. The said Writ Appeal is filed by the Annai Indira Gandhi Hut Dwellers Welfare Association and citing the said order in

the pending Writ Appeal, the respondents are trying to make an attempt to evict the petitioner who is not in occupation and possession of S.No.333. Though in the impugned notice, it has been stated that the sketch alleged to have been prepared by the Deputy Inspector of Survey falls under S.No.333, the same is contrary to Town Survey Record and the map maintained by the Survey Department. The alleged inspection made by the Railway officials in the absence of the Writ Petitioner, is nothing but farce, which cannot form the basis for eviction proceedings.

10. Learned counsel for the petitioner further contended that the Railway official and the Revenue Official instituted the eviction proceedings against the Indira Gandhi Hut Dwellers Welfare Association under the provisions of the Tamil Nadu Land Encroachment Act, 1905 and the said Association consisting of more than 100 members, have encroached the land ad-measuring an extent of 1 acre in S.No.333, which was leased to the Railways by the Revenue Department of the State Government. The Writ Petition filed by the said Association challenging the eviction proceedings, was dismissed on 23.02.2018, against which, the said Association had filed Writ Appeal No.687 of 2018 before the Division Bench challenging the order of the learned Single Judge. Only on 27.06.2018, this Court had directed the Revenue Officials to conduct a survey on the entire extent of land in S.No.333 and to fix the boundaries. The State Government has allotted and leased the lands comprised in S.No.333 in favour of Railways for MRTS project. Neither the Railways nor the State Government had title upon the lands comprised in S.No.317/1.

11. It is further contended by the learned counsel for the petitioner that the first respondent has not issued the eviction notice either under the provisions of the Public Premises Act or under the provisions of the Tamil Nadu Land Encroachment Act, 1905. The present petitioner is in lawful possession of the property and he cannot be dispossessed without following due process of law. In fact, this Court has passed order dated 27.06.2018 in the present Writ Petition directing the Revenue Officials to conduct a survey in the entire extent of S.No.333 by considering the registered sale deeds possessed by the writ petitioner and to fix the boundaries of the properties. The Revenue Officials conducted the survey on 09.07.2018 by flouting the direction issued by this Court on 27.06.2018 and the survey officials did not follow any of the basic settled procedures to conduct the land survey. The very survey had been conducted with a pre-conceived notion so as to reach the pre-meditated conclusion. The Surveyor has not fixed the boundaries in S.No.333 based upon the FMB sketch and block map of the Town Survey Department.

12. Learned counsel for the petitioner also submitted that the sale deeds of the petitioner and his vendors and the boundaries provided in the property, have not been taken into consideration for the purpose of locating and identifying the writ petitioner's property. This inadvertent error committed by the Survey Officials, has resulted in wrong conclusion. In fact, the survey report did not contain any material particulars with regard to fixation of boundaries, consideration of registered sale deeds, field measurement book, block map and superior imposition method to be adopted for survey. It is also the submission of the learned counsel for the petitioner that the petitioner is in lawful and legal possession of S.No.317/1 and not in S.No.333 and without following due process of law, the respondents are trying to evict the petitioner. Thus, learned counsel for the petitioner prayed to quash the impugned notice.

13. Countering the above submissions, learned Government Advocate appearing for the respondents 2, 3 and 7, by producing files, contended that this Court in W.A.No.687 of 2018 filed by the Annai Indira Gandhi Hut Dwellers Welfare Association, directed to remove the encroachment from the land in S.No.333, Velacherry Village, excluding 97 cents shown in green colour of the sketch and based on the said order, the Executive Engineer of Metropolitan Transport Project issued notice for removal of structures erected in the land allotted to the Railways, within a period of ten days. Aggrieved by the issuance of the said notice, the petitioner has filed the present W.P.No.12531 of 2018. In fact, the then Tahsildar, Velacherry Taluk had earlier issued notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 on 19.09.2017, in which it has been specifically stated that the location of the property vested in Old S.No.333/1pt., Block 192, T.S.No.2, Velacherry Village and the details of the enjoyers have been mentioned as Fish market and welding shop. Further, the letter in Reference No.A1/1763/2017, dated 14.11.2017, addressed to the petitioner, it is stated that since the petitioner has not replied to the said notice dated 19.09.2017, it was deemed that since there is no explanation from the petitioner, action will be taken according to law and the said letter has been received by the petitioner on 18.11.2017, to which the petitioner has not replied. The contention of the writ petitioner that the respondents are attempting to evict him from S.No.317/1, is utter falsehood and he is encroaching upon the Government land in S.No.333 and running the Fish market and the said land was allotted to Railways for MRTS project and hence, the official respondents prayed for dismissing the present Writ Petition.

14. Learned counsel appearing for the first respondent submitted that in fact, originally, it is the case of the petitioner that the land in S.No.317/1 was owned by Mr.G.Subramani and he settled it in the name of his wife Mrs.Saroja, who in turn settled it in favour of her son S.Selvam, who has sold it to Mr.M.Soniappan and Mrs.G.Vasantha, who again sold it to Mr.G.Subramani through their Power Agent and after the death of Mr.G.Subramani, his wife Saroja, sons S.Selvam, S.Harikrishnan (respondents 4 to 6 herein), and S.Manikandan had appointed one Manoj as their Power Agent and the petitioner has entered into a sale agreement dated 06.09.2018 with that Power Agent Mr.Manoj. In the affidavit filed by the petitioner and respondents 4 to 6, they have suppressed lot of material facts and details about the legal proceedings relating to the said property. In fact, the original owner G.Subramani, late husband of the fourth respondent, filed a civil suit in O.S.No.5827 of 1997 seeking mandatory injunction restraining the Collector of Chennai from interfering with his peaceful possession in S.No.333 of Velacherry of an extent of 20 cents. In the said suit, the District Collector filed written statement stating that the suit property in S.No.333 is a Government Poramboke land and the plaintiff G.Subramani made an attempt to grab the valuable Government land by manipulating documents and records during the year 1996. After examining the witnesses and exhibits filed by the plaintiff and the defendants therein, learned VII Assistant Judge, City Civil Court, dismissed the said suit by judgment and decree dated 05.08.2003, against which, appeal was filed by the said G.Subramani in A.S.No.440 of 2003, which was also dismissed on 29.12.2005, holding that the suit property in S.No.333 belongs to Government Poramboke and the appellant did not produce any sufficient documentary evidence to prove his title or adverse possession as claimed by him. These facts are suppressed by the petitioner and respondents 4 to 6 in this Writ Petition. In the said suit, the suit property was shown as S.No.333 and not 317/1 as contended by the petitioner.

15. It is further stated by the learned counsel for the first respondent that in the year 2014, the said G.Subramani has given a petition to the District Collector for issuance of Patta and to change the classification of land in S.No.317/1A2A2A1A1A1A from Sarkhar Poramboke to Ryotwari Manai. After conducting personal enquiry and scrutinising all the documents (which have also been referred to by the petitioner in this Writ Petition) submitted by the said G.Subramani, the District Collector, by proceedings dated 25.05.2015, rejected the request for grant of Patta and in the said proceedings, it is referred that the said Subramani already gave a petition dated

17.07.1997 for issuance of Patta in S.No.333 and it was ascertained that both the lands are one and same. In the said proceedings, the District Collector has also directed the Tahsildar, Velacherry to give necessary assistance to MRTS Railways in the process of eviction and to send compliance report. In spite of that, no steps were taken by the Tahsildar, Velacherry to evict the petitioner.

16. It is also contended by the learned counsel for the first respondent that the land in S.No.333 is allotted to Railways and they are not concerned with S.No.317/1. This Court, by order dated 27.06.2018, directed the Tahsildar, Velacherry Taluk to conduct a detailed survey of the entire extent of land in S.No.333 and fix the boundaries on all sides. In compliance of the said order of this Court, the Tahsildar, Velacherry conducted a detailed survey in S.No.333 in the presence of all the necessary parties. The entire survey was also videographed and photographs were also taken. On completion of the survey, the Tahsildar, Velacherry has filed a report indicating that the property of the petitioner is located in S.No.333 and not in S.No.317/1 as claimed by him. Thus, the Tahsildar has complied with the direction of this Court and passed an order for removal of encroachment, and therefore, it is incorrect to state that without affording an opportunity, action was taken against the petitioner for eviction.

17. On the above aspects, this Court also heard the submissions made by the learned counsel for the respondents 4 to 6.

18. Keeping the above submissions made on either side, this Court has given anxious consideration to the same and also perused the materials available on record.

19. The submission of the learned counsel for the petitioner is two-fold, one is that the property in S.No.317/1 belongs to the petitioner and not S.No.333 and the other is that the Deputy Inspector of Survey and Land Records, Velacherry Taluk, without properly taking the survey, issued notice pursuant to the direction of this Court to remove the encroachment in S.No.333 in W.A.No.687 of 2018. Hence, according to the learned counsel for the petitioner, before issuing the eviction notice, no opportunity was given to the petitioner.

20. Earlier, G.Subramani who claims to be the original owner of the property in question, has filed O.S.No.5827 of 1997, in which he sought prayer in respect of S.No.333 and not in respect of S.No.317/1. The said suit was dismissed by the Civil Court, against which First Appeal was preferred, which was also dismissed. In fact, on verification of the files produced by the official respondents, we find that pursuant to the order passed by this Court, notice under Section 7 of the Tamil Nadu Land Encroachment Act was issued to the petitioner on

19.09.2017. Since no explanation was given by the petitioner, another notice dated 14.11.2017 was issued, which was received by the petitioner on 18.11.2017. Thus, it is clear that sufficient opportunity was given to the petitioner for removal of the encroachment.

21. The survey/inspection report, dated 20.07.2018 produced before this Court shows that the property in question is in S.No.333 and not S.No.317/1. By analysing the files, it is clear that the petitioner is trying to continue his encroachment, which is apparent. In fact, the land in question was allotted to Railways for Railway Project/MRTS and it is stalled for so many years. From the judgment rendered in O.S.No.5827 of 1997 filed by G.Subramani, it is clear that the petitioner is in illegal occupation of part of S.No.333. The original owner G.Subramani gave a petition for issuance of Patta and changing the classification of land in S.No.317/1 and not in S.No.333. These cumulative facts show that the petitioner is only an encroacher in S.No.333 and in order to stall the eviction proceedings, he has been dragging on the matter and that the eviction notice was issued to him and sufficient opportunity was given to him to put forth his case by way of issuance of two notices, dated 19.09.2017 and 14.11.2017.

22. Hence, we do not find any merit in this Writ Petition, which is accordingly dismissed. No costs. Consequently, W.M.P. is closed.

cs

Sd/-

Assistant Registrar(CS iii)

//True Copy//

Sub Assistant Registrar

To

1. Executive Engineer,
Metropolitan Transport Project (Railways),
Mylapore, Chennai-600 004.
2. Tahsildar, Velachery Taluk,
Velachery, Chennai-600 042.
3. Joint Commissioner of Police,
Adyar Range, Chennai-600 020.
4. The District Collector,
Office of the District Collector, Chennai-600 001.

+1cc to Mr.B.Vijay , Advocate SR.No. 88543

+1cc to Mr.P.T.Ramkumar , Advocate SR.No. 88634

+1cc to Mr.D.Kumaralingam , Advocate SR.No. 89414

W.P.No.12531 of 2018

ASK(09/01/2019)