

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:10.12.2018

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE Mr. JUSTICE R.PONGIAPPAN

W.P.No.29918 of 2016 and
W.M.P.Nos.25877 & 25878 of 2016

C.D.Varadarajan

.. Petitioner

Vs.

1.The District Collector,
Salem District, Salem.

2.The Tahsildar,
Salem West Taluk,
Salem District.

3.The Revenue Inspector,
Sooramangalam Sub Taluk,
Salem West Taluk, Salem District.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari calling for the records relating to the proceedings of the 1st Respondent dated 9.8.2016 made in Na.Ka.28933/2011/K4 confirming the notice of the 2nd Respondent dated 21.5.2016 quash the same.

For Petitioner : Mr.M.Devaraj

For Respondents : Mr.J.Pothiraj
Special Government Pleader

O R D E R

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

According to the Petitioner, the lands in Old S.No.50 of Jagir Ammapalayam Village, New S.No.161/1, measuring 7.33.0 Hectares was owned by Syed Ali Badsha Shaib Shuthari which was an 'Inam Land' entirely held free of land tax. The said Syed Ali

Badsha Shaib Shuthari gave patta to his son, Syed Ushman Badsha Sahib Shuthari, who along with his brothers had leased out the said lands through the registered Lease Deed dated 27.06.1959 to one Ganesan bearing Document No.2496 of 1959 [on the file of Joint Sub Registrar Office, Salem] for a period of 20 years for the purpose of cultivation and mining of Chalk or Magnesite. As a matter of fact, the said Ganesan had assigned his leasehold right over the said property in favour of M/s.Calmags Mines Minerals P Ltd. through the Assignment Deed dated 21.08.1963 [vide registered Document No.2835 of 1963 on the file of the Joint Sub Registrar Office No.3, Salem]. The Inamdar Wwner viz., Syed Ushman Badsha issued a patta to the Petitioner on 28.10.1963.

2.The stand of the Petitioner is that he had developed the land by constructing the factory for grinding Magnesite, levelling the remaining land cultivating seasonal crops in rest of the land. He had obtained the necessary Lease for Mining from the 1st Respondent/ District Collector, Salem District through a Lease Deed dated 20.09.1966 for a period of 20 years only in respect of minerals and other allied activities and not in respect of the surface of the land under the Mines and Minerals Act from 1963. Further, he had installed a separate electric transformer to have adequate load of power supply viz., 250 HP service connections for the grinding activities. Moreover, he had put up a factory shed and the building on the same and is assessed to property tax. He incurred a sum of Rs.50 lakhs in the installation of the 'Transformer' and putting up the permanent structures. He had planted about 50 coconut trees which are now about 40 years and they are yielding ones. Even now the Revenue Records point out that classification of the Land as 'Unassessed Dry Land' and not 'Government Land'. The Petitioner is paying the kist, property tax and the electricity charges in respect of the property from the year 1963 onwards and enjoying the property as an absolute one. He had also applied for the regular Patta and that the 2nd Respondent/Tahsildar, Salem West Taluk, Salem District had issued the Petitioner with the Ownership Certificate on 23.10.2003. In June 2011, the Officials attached to the Respondents had attempted to dispossess the Petitioner from the property belonging to him. Hence, he had filed W.P.No.15299 of 2011 praying for passing of an order by this Court in anyway interfering with his peaceful possession and enjoyment of the property measuring 7.33 Hectares including the building situated in S.No.161/1, Old No.50 Jagir Ammapalayam Village, Salem District. The said Writ Petition was disposed of on 30.08.2011 recording the undertaking of the Tahsildar that the Petitioner is an 'Unauthorised Encroacher' and has to be evicted only under 'Due Process of Law'.

3.The Petitioner filed a Suit in O.S.No.802 of 2011 on the file of the Learned District Munsif Court, Salem seeking the relief of 'Declaration of Title and Grant of Patta'. After contest, the said Suit was dismissed on 29.04.2016. In the meanwhile, the 3rd Respondent/Revenue Inspector, Sooramangalam Sub Taluk, Salem West Taluk, Salem District had issued a notice to the Petitioner (under Section 7 of the Tamil Nadu Land Encroachment Act, 1905) dated 14.05.2016 calling upon him to submit his explanation before him or the 2nd Respondent/Tahsildar, Salem West Taluk, Salem District by 20.05.2016 as to why the proceedings under Section 6 ought not to be taken. Further, he approached the 3rd Respondent/Revenue Inspector, Sooramangalam Sub Taluk, Salem West Taluk, Salem District in person and submitted his explanation stating that the Land in question is an 'Inam Land' and as such, is saved by Sub-Section 2(a) of the Act and cannot invoke the provisions to evict him and further stating that in view of the vacations, the Appeal against the Judgment and Decree in O.S.No.802 of 2011 could not be obtained and Appeal filed and to grant time till the filing of the Appeal. However, the 3rd Respondent had refused to receive his explanation. The Petitioner submitted his explanation to the 2nd Respondent. Although the 2nd Respondent had received the Petitioner's explanation on 20.05.2016, had passed orders under Section 6 on 21.05.2016, without considering the explanation and without referring to the same had directed him to vacate from the property in S.No.161/1 Jagir Ammapalayam Village within 7 days from the date of receipt of the order.

4.The prime plea taken on behalf of the Petitioner is that vast extent of Land in the 'Jagir Ammapalayam Village' are 'Inam Lands' which are classified as 'Unassessed Dry Lands' in the Revenue Records and there are many similarly situated persons like the Petitioner occupied the Lands and that the Respondents, without any jurisdiction to facilitate some interested persons, are endeavouring to dispossess him from the valuable Land which he is in possession and enjoyment. Apart from that, the notice under Section 7 of the Act was issued on 14.05.2016 on a Saturday and his explanation was not received and therefore, the Petitioner was perforced to send his explanation through RPAD on 20.05.2016 and the impugned order was passed on 21.05.2016 granting him only seven days time to vacate even without permitting him to exhaust the Statutory 'Appeal' which exhibits the perverse and arbitrary attitude of the Respondents. The Petitioner had filed W.P.No.18378 of 2016 assailing the order passed by the 2nd Respondent/Tahsildar, Salem West Taluk before this Court and on 25.05.2016 this Court has observed that in view of the fact that Appeal remedy is available, granted liberty to the Petitioner to prefer an Appeal before the 1st Respondent and till such time, directed the 2nd and 3rd Respondents to defer the further proceedings in terms of the

impugned notice dated 21.05.2016.

5.It comes to be known that the Petitioner had preferred an Appeal before the 1st Respondent/District Collector, Salem District, Salem together with the stay petition on the same date and that the 1st Respondent, without affording any opportunity to the Petitioner, had passed the impugned order in a perverse manner. In spite of the fact in Appeal, it was mentioned as 09.06.2016 and also the stay petition was dated, the 1st Respondent/District Collector, Salem in the impugned order had observed that both the petitions are undated. Based on the Judgment passed in O.S.No.802 of 2011 and the order passed in W.P.No.18378 of 2016 the 1st Respondent/District Collector, Salem had rejected the 'Appeal', failing to appreciate the fact that the request for assessing the Land in his possession was sought for as as per Section 3 of the Act.

6.It transpires that the Petitioner preferred First Appeal in A.S.No.54 of 2016 as against the Judgment and Decree in O.S.No.802 of 2011 passed by the trial Court and the said Appeal was filed after filing the instant Appeal before the 1st Respondent in view of the fact that the Court had reopened after summer vacation in the month of June and the copy of the Decree were obtained on 07.06.2016 and hence, the First Appeal was filed.

7.The contention advanced on behalf of the Petitioner is that the Respondents have no jurisdiction to invoke the ingredients of the Tamil Nadu Land Encroachment Act, 1905 for the reason as per Section 2(1)(a) of the Tamil Nadu Land Encroachment Act, the Land of Inamdar, Jagirdar etc. are exempted from the provision of the Act. As such, the notice dated 14.05.2016 issued under Section 7 of the Act, 1905 and the impugned order dated 21.05.2016 passed under Section 6 of the Act are without jurisdiction and therefore, they are liable to be set aside in the interest of Justice.

8.The other plea taken on behalf of the Petitioner is that the Lands in occupation of the Petitioner are not 'Government Lands' and they have been classified as 'Unassessed Dry Lands' which mean 'Inam Land' is held free of tax and therefore, the Respondents have no jurisdiction to invoke the provisions of the Tamil Nadu Land Encroachment Act, 1905.

9.The Petitioner in his Writ Petition proceeds to make a significant mention that the notice under Section 7 of the Act was issued only in respect of 0.82.0 hectares whereas the order under Section 6 of the Act for an extent of 7.33.0 hectares which shows that the eviction order was passed in a mechanical manner without following the procedure contemplated under the

Encroachment Act as well as the procedure enshrined under the Revenue Court. On that score also, the impugned order is liable to be set aside.

10. In fact, the 3rd Respondent/Revenue Inspector, Sooramangalam Sub Taluk, Salem West Taluk, Salem District, while serving notice under Section 7 of the Act is to make a Report to the 2nd Respondent/Tahsildar, Salem West Taluk, Salem District. However, the same was not followed which is evident from the order dated 21.05.2016 wherein no reference was made which shows that the order was passed without complying with the requisite provisions and the same was not looked into by the 1st Respondent/District Collector, Salem and as such, the impugned order is liable to be set aside.

11. The Petitioner comes out with a categorical stand in his Writ Petition that he is cultivating dry crop in the remaining land and have about 50 coconut trees which are about 40 years old. However, the impugned order was passed in a cryptic manner and thereby the Respondent is endeavouring to deprive him of the property which is worth crores. Hence, the Petitioner has filed the present Writ Petition praying for passing of an order by this Court in calling for the records pertaining to the proceedings of the 1st Respondent dated 09.08.2016 confirming the notice of the 2nd Respondent dated 21.05.2016 and to quash the same.

12. Countering the submissions of the Petitioner side, the Learned Special Government Pleader for the Respondents 1 to 3 contends that Calmags Mines Minerals Private Limited, Salem had applied for the grant of the Mining Lease for Magnesite for a period of 20 years over an extent of 19.10 acres in S.No.50 of Jaghir Reddipatti hamlet of Jaghir Ammapalayam Village in Salem Taluk of Salem District and the entire estate of Jaghir Ammapalayam was taken over by the Government under the Madras Inam Estates (Abolition and Conversion into Ryotwari) Act, 1963. Even in the Revenue 'A' Register of the year 1972, it was clearly mentioned that Survey No.161/1 of Jahir Ammapalayam Village is a Government Poramboke Land and it is classified as 'Karadu' and that the Petitioner had suppressed this fact in the entire earlier proceedings. Apart from that, it decided to grant the Mining Lease applied for by the Company, treating the Lands as 'Government Lands'. By virtue of the powers conferred by Section 30 of the Mines and Minerals (Regulation and Development) Act, 1957, the Government of India had granted necessary extension of time to dispose of the Application dated 28.03.1964 of the Calmags Mines Minerals Private Limited, Salem as per G.O.Ms.No.2452 dated 04.06.1966. In the said Order, at para 6, it was mentioned that the Collector of Salem is requested to take necessary further action for the execution of

the Lease Deed. As soon as the Deed is executed, the date of such Execution ought to be reported to the Government and the Director of Industries and Commerce.

13.The Learned Special Government Pleader for the Respondents brings it to the notice of this Court that the Lease Deed was executed on 29.09.1966 for a period of 20 years and that the Lease period expired on 28.09.1986. Later, the Petitioner had applied for Renewal of the Mining Lease before the Secretary, Industries Ministry, Madras through the Collector of Salem on 25.09.1985. The 1st Respondent/District Collector, Salem and the Director of Geology and Mining had forwarded the Renewal Application to the Government for suitable orders. The Tamil Nadu Magnesite Limited, Salem had stated that the aforesaid Land is very nearer to the existing mines and plant and also the material is highly suitable for their proposed Chemical Beneficiation Plant. Therefore, a request was made to the Government to reserve the area mentioned aforesaid for the State Exploitation by the Tamil Nadu Magnesite Limited, Salem. In fact, the Government of Tamil Nadu after examining the proposal had accepted the request of Tamil Nadu Magnesite Limited, Salem and reserved the area mentioned above and that the Renewal Application dated 25.09.1985 applied by Calmags Mines and Minerals, Salem was rejected on 29.09.1987 in terms of G.O.Ms.No.684.

14.The Learned Special Government Pleader for the Respondents comes out with a plea that the Petitioner in W.P.No.10136 of 1987 had clearly averred that 'In and by a lease dated 29.09.1966 he was granted a lease of an extent of 19-20 acres of Government Land in Old S.No.50, New Survey No.161/1 in the Jagir Ammapalayam Village, Salem Taluk for the purpose of quarrying Magnesite form the demised land'. As such, the Petitioner had clearly admitted that the properties owned by the Government and he was a 'Lessee'. Finally, the Writ Petition was dismissed on 30.03.2001.

15.The Learned Special Government Pleader for the Respondents points out that the Petitioner had not assailed the G.O.Ms.No.684 dated 29.09.1987 and furthermore, Rules 58 and 59 of the Mineral Concession Rules empower the 'Government' to propose any area for Government Exploitation etc. Indeed, the Petitioner had filed Writ Appeal in W.A.No.1437 of 2001 as against the order dated 30.03.2001 in W.P.No.10136 of 1987 before this Court and the said Writ Appeal came to be dismissed on 27.03.2008. Moreover, in the said Writ Appeal Judgment, it was clearly mentioned as under:

"The land in respect of which the renewal is sought for is required for a Government Company, that requirement can be taken into

consideration either at the time of the original grant or at the time of renewal of the lease granted earlier etc."

16.The Learned Special Government Pleader for the Respondents contends that the Petitioner again filed W.P.No.15299 of 2011 against the District Collector, Salem and others and in the said Writ Petition, on 30.08.2011 an order was passed, which reads as under:

"At the time of admission of the writ petition on 28.06.2011, this Court passed an order of interim injunction. The third respondent Tahsildar, Salem has filed a petition for vacating the interim injunction granted on 28.06.2011 along with a counter affidavit stating that the petitioner is an unauthorised encroacher in S.No.161/1 and that he has to be evicted only under due process of law. It is further stated that the petitioner has let out the buildings to lease to some persons and using the land for commercial purpose."

17.The Learned Special Government Pleader submits that the even the suit filed by the Petitioner in O.S.No.802 of 2011 on the file of the Learned 1st Additional District Munsif, Salem against the 1st Respondent/District Collector, Salem seeking the relief of Declaration, Permanent Injunction and Mandatory Injunction in directing the Defendant to issue Patta to the suit property in his favour was dismissed on 29.04.2016 and in view of the fact that the suit was dismissed, the 3rd Respondent/Revenue Inspector, Sooramangalam Sub Taluk, Salem West Taluk, Salem District had issued notice to the Petitioner on 14.05.2016 under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 which was received by the Petitioner on the same day. Thereupon, the 2nd Respondent/ Tahsildar, Salem West issued a notice under Section 6 of the Act to the Petitioner on 21.05.2016, which was also received by the Petitioner. Later, a Writ Petition in W.P.No.18378 of 2016 was filed against the Respondents by the Petitioner assailing the notices under Section 7 and 6 of the Tamil Nadu Land Act and Tamil Nadu Act 3 of 1905 and on 25.05.2016 this Court, while disposing of the Writ Petition, had granted liberty to the Petitioner to prefer an Appeal against the impugned notice dated 21.05.2016 before the 1st Respondent on or before 21.06.2016 etc.

18.The Learned Special Government Pleader proceeds to point out that the Petitioner preferred an Appeal under Section 10-B of the Tamil Nadu Land Encroachment Act before the 1st Respondent

and the 1st Respondent/District Collector, Salem passed an order by dismissing the Appeal on 09.08.2016. Furthermore, the Petitioner who filed A.S.No.54 of 2016 before the Principal Sub-Ordinate Judge, Salem against the Judgment and Decree dated 29.04.2016 in O.S.No.802 of 2011 on the file of the trial Court is now pending. However, in the said Appeal, two Interlocutory Applications in I.A.Nos.58 & 64 of 2016 were preferred by the Petitioner and after enquiry, the same came to be dismissed on 29.08.2016.

19.Also, it is represented on behalf of the Respondents that as against the order of the 1st Respondent/District Collector, Salem dated 09.08.2016, the Petitioner has a remedy of preferring a 'Revision' as per Section 10-A of the Tamil Nadu Land Encroachment Act, 1905 before the Government of Tamil Nadu. As such, the Writ Petition projected by the Petitioner is per se not maintainable.

20.In view of the fact that in Law the Petitioner is to prefer 'Revision' as against any 'Decision' or 'Order' passed under the Tamil Nadu Land Encroachment Act, 1905 (Act III of 1905) before the Government of Tamil Nadu, he is directed to file a 'Revision Petition' before the 'Government of Tamil Nadu', if he so desires/advised and to seek his remedy for redressal of his grievances, by raising all factual and legal pleas, of course, in the manner known to Law and in accordance with Law.

21.With the aforesaid observation(s) and direction(s), the Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Sgl

To

1.The District Collector,
Salem District, Salem.

2.The Tahsildar,
Salem West Taluk,
Salem District.

3.The Revenue Inspector,
Sooramangalam Sub Taluk,
Salem West Taluk, Salem District.

4.The Government Advocate,
High Court, Madras.

+1cc to Government Pleader sr.no.85479
+1cc to Mr.M.Devaraj, Advocate sr.no.84972

W.P.No.29918 of 2016

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nr 23/01/2019