

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 13.06.2018
CORAM:
THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.NO.13234 OF 2018
AND WMP NO.15589 OF 2018

T.Mohan

... Petitioner

Versus

1.The Tahsildar
Pallavaram Taluk
Kanchipuram District.

2.M.Tamil Selvan Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, forbearing the first respondent from evicting the petitioner peaceful possession and enjoyment from morefully described in the schedule of the property.

For Petitioner : Mr.K.Chandru
For Respondent-1 : Mr.R.Udhayakumar
Additional Government Pleader

O R D E R

(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 for the first respondent.

2. The petitioner claims that his father Late. Tiruvengadam was an Agriculturist having large extent of lands in and around Mangadu Village. The land in S.No.185 admeasuring to an extent of 0.10.5 acres of Mangadu Village was also in his possession and enjoyment and his father executed a registered Will along with settlement deed in his favour and thereby he succeeded to the estate of his father and he is also carrying on agricultural activities. The petitioner would state that at the instance of the second respondent, who belong to a political party, action was taken under the provisions of the Tamil Nadu

Land Encroachment Act, 1905, by issuing notice under Section 5 of the said Act, for which, the petitioner has submitted his response on 17.04.2018, to the first respondent, praying for issuance of patta. The petitioner apprehending dispossession at the hands of the first respondent, without resorting to due process of law, came forward to file this writ petition.

3. The learned counsel appearing for the petitioner would submit that the first respondent is expected to follow the due process of law and without doing so, the petitioner cannot be dispossessed from the lands in question and prays for appropriate orders.

4. Mr.R.Udhayakumar, learned Additional Government Pleader, would submit that the lands in occupation of the petitioner is classified as "water body/water source" and comes under the control of the Public Works Department, Water Resources Organization and therefore, the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act and Rules framed thereunder, can be invoked and Form - III notice has also been issued during first week of May 2018, which expired on 31.05.2018 and due to the pendency of the writ petition, further action is not taken up.

5. In response to the said submission, learned counsel for the petitioner would submit that the petitioner is yet to receive Form - III notice said to have been issued by the concerned Public Works Department officials.

6. The learned Additional Government Pleader undertakes to furnish a copy of the same to the counsel appearing for the petitioner, who in turn undertakes to furnish the same to the petitioner, so as to enable him to submit his response.

7. This Court, taking into consideration the above facts and circumstances, and without going into the merits of the claim made by the petitioner, and also the undertaking given by the learned Additional Government Pleader that Form - III notice would be served, directs the first respondent to furnish a copy of Form - III notice to the learned counsel for the petitioner, within a period of one week from today. Upon receipt of the same, learned counsel for the petitioner undertakes to furnish the same to the petitioner, within a further period of one week thereafter. The petitioner, upon receipt of the said notice, is at liberty to submit his response, by enclosing all the relevant documents and photographs, within a period of two weeks thereafter. The Public Works Department official, upon receipt of the same, is directed to consider the same, on merits, and pass appropriate orders, within a period of three weeks thereafter.

8. Till such time, the respondents shall not disturb the possession of the petitioner, in respect of the lands in question. It is also made clear that the petitioner, till the disposal of the representation, by the concerned official of the Public Works Department, shall not create any third party rights, in respect of the lands in question, said to have been in his possession and shall not alter physical features also.

9. The writ petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

10. The Registry is directed to mark a copy of this order to the concerned official of the Public Works Department.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

TK

To

1.The Tahsildar
Pallavaram Taluk
Kanchipuram District.

2.The Executive Engineer
Public Works Department
Chennai

+1cc to Mr.K.Chandru, Advocate sr.no.37751(21/08/2018)

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W.P.NO.13234 OF 2018

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