

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.28109 of 2017
and
W.M.P.Nos.30201 and 30202 of 2017

D.Balaji

.. Petitioner

Vs.

1. The State rep. by
The Secretary to Government,
Revenue Department,
Secretariat,
Chennai-600 009.
2. The Additional Chief Secretary,
Commissioner of Land Administration,
Chepauk, Chennai-600 005.
3. The District Collector,
Kancheepuram District,
Kancheepuram.
4. The Tahsildar,
Chengalpattu Taluk,
Kancheepuram District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records in T1/18262/2017, dated 22.09.2017 passed by the second respondent and quash the same and consequently to direct the fourth respondent to issue patta to the petitioner's property comprising in S.No.109B measuring 2600 Sq.Ft. situated at Thirutheri Village, Chengalpet Taluk, Kancheepuram District, by implementing G.O.Ms.No.854, Revenue 1 (2) Department, dated 30.12.2006; G.O.Ms.No.34, dated 23.01.2008 and G.O.Ms.No.43, dated 29.01.2010 passed by the Revenue LD1(2) Department.

For petitioner: Mr.M.G.Ramachandiran

For respondent: Mr.A.N.Thambidurai, Spl.G.P.

ORDER

(The Order of the Court was made by M.Venugopal, J)

The petitioner has come forward with this Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the records in T1/18262/2017, dated 22.09.2017 passed by the second respondent and quash the same and consequently to direct the fourth respondent to issue patta to the petitioner's property comprising in S.No.109B measuring 2600 Sq.Ft. situated at Thirutheri Village, Chengalpet Taluk, Kancheepuram District, by implementing G.O.Ms.No.854, Revenue 1(2) Department, dated 30.12.2006; G.O.Ms.No.34, dated 23.01.2008 and G.O.Ms.No.43, dated 29.01.2010 passed by the Revenue LD1(2) Department.

2. Heard learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents and perused the materials available on record. No counter is filed by the respondents.

3. According to the petitioner, he had purchased a vacant land with building comprised in Survey No.109B, measuring 2600 Sq.Ft. situated at G.S.T. Road, Thirutheri Village, Chengalpet Taluk, Kanchipuram-603 204, from his vendor Mrs.Jegadeeswari, wife of Mr.Chandrasekaran, by way of unregistered sale deed, dated 18.06.2016. As a matter of fact, the property is in possession of the petitioner and his predecessors for more than four decades.

4. The version of the petitioner is that when he purchased the property, his erstwhile vendor was running a Hotel with valid licence and the land was sold to the petitioner since he suffered loss in his Hotel business. After the petitioner purchased the property, he constructed a Lorry Weigh Bridge in the name of M/s.Jayes Electric Weigh Bridge and complied with all the statutory requirements and applied for Certificate of License. Indeed, pursuant to his application, the Assistant Controller of Legal Metrology, Kanchipuram District, who is the competent authority, inspected the petitioner's premises for the purpose of issuing the Certificate and later, the same issued with Certificate under the Legal Metrology Act for conducting Lorry Weigh Bridge business on 14.09.2016 and subsequently he proceeded to conduct the business.

5. It comes to be known that the electricity connection was already given by the Tamil Nadu Electricity Board in favour of the petitioner's erstwhile vendor and the electricity connection has also been extended to the petitioner. The petitioner's vendor was in possession of the property tax documents and all other relevant documents to substantiate his ownership. In substance, the stand of the petitioner is that his predecessor (s) was/were the absolute owner of the land and had a clear title, thereby the petitioner became the owner of the said

property.

6. The grievance of the petitioner is that his rivalry, one Mr.Raja, who is the owner of M/s.Manickam Weigh Bridge and running the business 4 km away from the petitioner's place, with his political influence, instigated the Government officials to restrain the petitioner from carrying on the business. Only on the basis of the complaint given by the said Raja, the Village Administrative Officer visited the petitioner's business premises and threatened that he would demolish the construction in the land, stating that the property belongs to the Government. Apart from that, there are 400 residents and the petitioner alone is being disturbed by the respondents and not others. The petitioner has no other source of income for his survival, except depending upon the Lorry Weigh Bridge business. His case is that he was not issued with any notice under Section 7 of the Tamil Nadu Land Encroachment Act, but the authorities have affixed the same in the petitioner's premises without the knowledge of the petitioner. Later, he came to know of the same. When he had approached the fourth respondent-Tahsildar, he was informed that they will not take any action against the petitioner, but to the utter dismay, notice under Section 6 of the said Act was affixed in the petitioner's premises on 20.12.2016 with pre-date 10.12.2016 in an arbitrary manner. Hence, the petitioner has filed W.P.No.559 of 2017 before this Court, which was disposed of on 09.01.2017 by the Division Bench, observing as follows:

"The petitioner has preferred an appeal under Section 10 of the Tamil Nadu Land Encroachment Act, 1905 along with stay application and it will be for the authorities to take a call on the interim relief, for which, the petitioner may approach the authorities for orders.

2. The writ petition, accordingly, stands disposed of. No costs. Consequently, W.M.P.Nos.598 to 600 of 2017 are closed."

7. Subsequently, the appeal preferred by the petitioner before the third respondent/District Collector, was rejected by proceedings in Se.Mu.Na.Ka.2010/2017/AA2, dated 12.05.2017. Aggrieved by the same, the petitioner preferred W.P.No.18513 of 2017 before this Court, which was disposed of by the Division Bench on 20.07.2017 by observing as follows:

"3. In the light of the endorsement made, liberty sought for by the petitioner is granted and he is at liberty to file a revision before the Additional Chief Secretary/Commissioner, Land Administration, Chepauk, Chennai-600 005, within a period of two weeks from the date of receipt of a copy of this order and till such time, the respondents 2 and 3 shall defer further proceedings in terms of the impugned notices issued

under Sections 7 and 6 of the Tamil Nadu Land Encroachment Act, 1905. The Additional Chief Secretary/Commissioner, Land Administration, Chepauk, Chennai-600 005, shall entertain the revision along with the petition for stay, if the papers are otherwise in order and the said official is at liberty either to take up the petition for stay filed under Section 10-B of the Act or the main revision filed under Section 10-A of the Act and pass appropriate orders on merits and in accordance with law within a further period of ten weeks thereafter and communicate the decision taken to the petitioner.

4. The writ petition stands dismissed as withdrawn subject to above observations. ..."

8. Thereafter, the petitioner preferred a revision petition on 08.08.2017 under Section 10-A of the said Act as against the order of the third respondent, dated 12.05.2017 in the teeth of the observations made by this Court in W.P.No.18513 of 2017. He has also preferred an application for stay under Section 10-B of the said Act.

9. At this stage, learned counsel for the petitioner submitted that the impugned proceedings on the said revision petition, was issued by the second respondent without hearing the stay petition and the revision petition filed by the petitioner was dismissed by the impugned order dated 22.09.2017. Hence, the petitioner is assailing the said proceedings dated 22.09.2017 issued by the second respondent on the ground that the same is not sustainable either on facts or in law and in short, the second respondent had issued the impugned proceedings without any application of mind.

10. Learned counsel for the petitioner projects an argument that the second respondent has failed to note that there are 400 houses situated in the location in question, in which the petitioner was treated on a different footing and in short, the petitioner should be treated on par with the other residents.

11. Per contra, learned Special Government Pleader appearing for the respondents submitted that the second respondent-Additional Chief Secretary/Commissioner of Land Administration, vide impugned proceedings, dated 22.09.2017 has passed final orders on the revision petition filed by the petitioner dated 08.08.2017 and in fact, the second respondent has perused the connected records/files and thereafter passed detailed order by coming to the conclusion that the revision petitioner, the writ petitioner herein, had encroached upon the case land involving S.No.109-B, which is classified as Periyar Eri in Thirutheri Village, Chengalpet Taluk, Kancheepuram District, and as such, the second respondent came to the right conclusion that the order passed by the third respondent/District Collector is free

from any flaw and accordingly, the revision petition was dismissed as devoid of merits, apart from consequently disposing of the stay petition.

12. The Supreme Court, in a catena of decisions, held that encroachment on the water bodies/water courses like lake, Eri, river bed, etc., is impermissible taking into account the larger interest of the public. Taking note of the submissions made on either side and that, as the petitioner and others had encroached on the Eri, the respondents are directed to remove the encroachment in question, as the Supreme Court has time and again held that there shall not be any encroachment on the river bed/water bodies/water courses. Further, the Supreme Court as well as this Court, in number of decisions, have stressed that no encroachment should be tolerated over the water bodies, which constitute part of the precious natural resources and it needs to be protected in the interest of public. If the water bodies and water courses are allowed to be encroached upon, it would result in reduction in the flood storing and carrying capacity, forcing the water to deviate from its regular course and enter the residential areas causing devastating effects, more particularly, the flood, which we lastly experienced in December 2015.

13. This Court, considering the crystalline fact that the petitioner has encroached upon the land in question, which is classified as Periyar Eri in the said location and also taking into account yet another fact that the Eri/lake/river area, cannot be encroached upon by any one much less the petitioner, this Court is of the considered view that the petitioner is to be evicted from the case land within a period of one month from the date of receipt of a copy of this order. If any Police assistance is required, it is open for the fourth respondent-Tahsildar to take the assistance of the Police aid and remove the encroachment in question made by the petitioner in the case land as observed supra. Only if the situation so warrants for Police assistance, the same shall be sought, if need be.

14. It cannot be gainsaid that when the petitioner has pointed out that he has been singled out in regard to the removal of the encroachment in the subject land, the authorities are also to bear in mind that they are duty bound to remove all the encroachers from the encroached area in question, within one month from the date of receipt of a copy of this order.

15. With the above observations and directions, the Writ Petition is disposed of. No costs. Consequently, W.M.Ps. are closed.

Sd/-

Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

CS

To

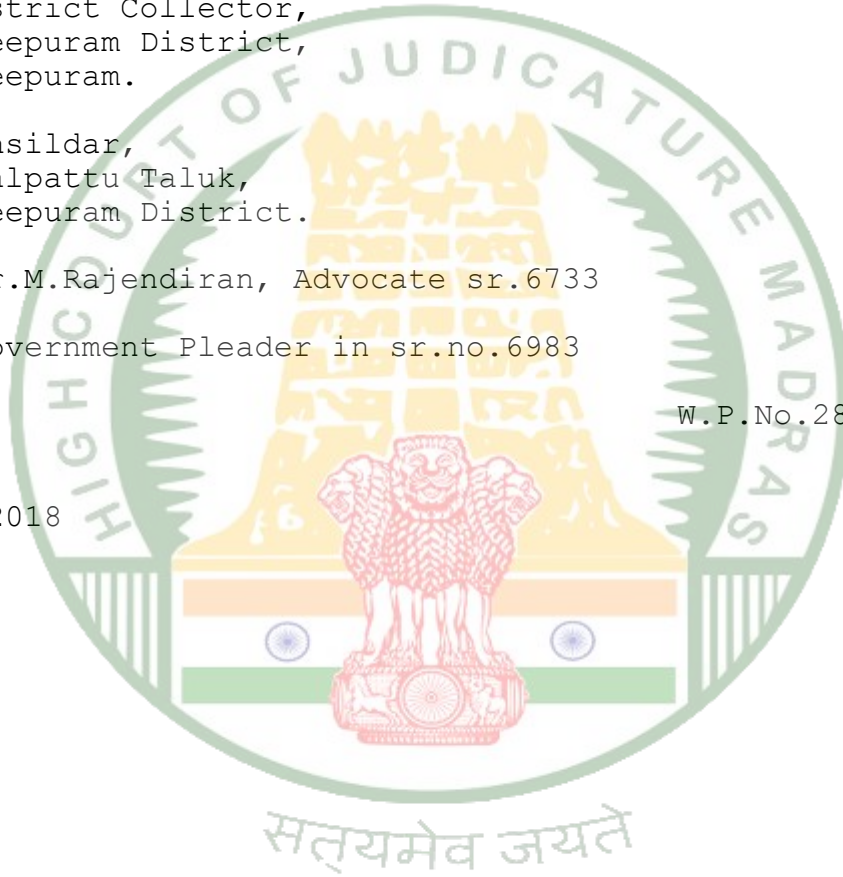
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+1cc to Mr.M.Rajendiran, Advocate sr.6733

+1cc to Government Pleader in sr.no.6983

W.P.No.28109 of 2017

vd(co)
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