

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:02.01.2018

Coram

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

W.P.No.18664 of 2017 and
W.M.P.Nos.20198 & 20199 of 2017

D.Ranjith Kumar

.. Petitioner

Vs.

The Executive Officer,
Walajabad Town Panchayat,
Walajabad, Kancheepuram - 631 605.

..Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records of the respondent relating to the proceeding in Na.Ka.No.124/2017/A1 dated 02.05.2017 and quash the same and consequently direct the respondent not interfere with the peaceful possession and enjoyment of the compound wall of the premises bearing Door No.19, Appaji Street, Meccleinpuram, Walajabad, Kancheepuram 631 605, without due process of law.

For Petitioner : Mr.S.S.Swaminathan

For Respondent : Mr.A.N.Thambidurai

Special Government Pleader

सत्यमेव जयते
O R D E R

[Order of the Court was made by S.VAIDYANATHAN, J.]

WEB COPY
The petitioner has come forward with this writ petition to call for the records of the respondent relating to the proceeding in Na.Ka.No.124/2017/A1 dated 02.05.2017 and quash the same. Further, he has sought for passing of a consequential order by this Court to direct the respondent not to interfere with the peaceful possession and enjoyment of the compound wall of the premises bearing Door No.19, Appaji Street, Meccleinpuram, Walajabad, Kancheepuram 631 605, without due

process of law.

2.The case of the petitioner is that originally the petitioner's mother was in possession and enjoyment of the property (vacant plot), bearing Plot No.31, Door No.19, Appaji Street, Mcclellin Puram, Walajabad, Kancheepuram, measuring an extent of 2556 sq.ft. Thereafter, he acquired the said property from his mother, by way of Settlement Deed, dated 21.07.2011 and that the petitioner has obtained building plan permission on 29.11.2012 from the respondent and constructed the building as per the building plan approval.

3.According to the petitioner, he has paid the necessary property tax and other charges due to the respondent and that the petitioner is possessing a family card. Suddenly, the petitioner's mother has received a notice dated 02.05.2017 stating that the petitioner will have to vacate the encroachment portions and vacate the compound wall constructed, at the patta land, at his cost, and that, if it is not done within a period of 15 days, proper action will be taken for removing the encroachment. Even though he has not given reply to the said notice, there is a violation of principles of natural justice, as the petitioner was not given any opportunity. According to the petitioner, the so-called inspection was not done in his presence. According to him, when the land has been settled in favour of the petitioner, unless and otherwise, the proper procedure as contemplated be taken, he cannot be evicted.

4.Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondent has filed counter affidavit and contended that the the petitioner's mother was given a land to the petitioner to an extent of 2 cents only in S.No.178/2 (New S.No.178/31). It is also submitted that the petitioner has usurped 2556 sq. ft. of land in S.No.178/2 (New S.No.178/31), by way of Settlement Deed dated 21.07.2011 and registered as Document No.4610 of 2011 in the Sub Registrar Office, Walajabad. It is also submitted that the planning permission was accorded, based on the Settlement Deed dated 21.07.2011.

5.The learned Special Government Pleader has further submitted that the petitioner's mother was issued a notice with regard to the encroachment and that she should remove the encroachment within 15 days from the date of receipt of the notice and that the land marked as E in the sketch sent by the Zonal Deputy Tahsildar, is a property vested with the Revenue Department and the notice was served on the petitioner's mother based on the survey conducted by the Revenue Department. It is stated that the petitioner is an encroacher beyond the extent of the land mentioned in the free patta issued to her and that any plan that has been sanctioned for construction is in violation of the statutory provisions.

6. Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader for the respondent and perused the materials available on record.

7. It is not in dispute that the petitioner's mother was allotted an extent of two cents by free patta in S.No.178/2 (New Survey No.178/31). The petitioner's mother has settled the property to an extent of 2556 sq. ft. in the name of the petitioner, who has obtained the so-called planning permission to construct a house. As per the Revenue Department's records and from the impugned notice dated 02.05.2017, it is clear that the petitioner has encroached the road portion. The question of violation of principles of natural justice, as an opportunity of being heard was not given and that inspection was not conducted in his presence, cannot be a ground for permitting the petitioner to occupy the area which has not been allotted to the petitioner's mother. The petitioner is an encroacher and the encroacher cannot plead violation of principles of natural justice when no prejudice is caused to him, as he has grabbed the excess land.

8. The Supreme Court time and again has held that the persons, who have encroached, cannot be lightly dealt with. When the petitioner has encroached the land and contended that the principles of natural justice have got to be followed and thereafter seeks for regularisation of the plots in which they encroached, cannot be a ground to grant the relief sought for in this writ petition. This Court cannot perpetuate illegality committed by any one, much less the petitioner. This is a fit case where the relief cannot be granted to the petitioner and that appropriate action has got to be taken by the respondent to remove the encroachment.

9. The officials have conducted spot inspection and found that there is an encroachment. The petitioner's mother had encroached an extent of 1684 sq. ft. of land, including the area she has settled to and in favour of the petitioner, more than the extent mentioned in the house site patta.

10. This Court makes it clear that the officials, who are responsible for removing the encroachment, shall take steps to remove the encroachment before the end of this month, failing which, proper disciplinary action will have to be taken against the said officials and major penalty has to be imposed, apart from entering it in service records. If no disciplinary action is initiated against the erring officials, those who are responsible to initiate action shall not be allowed to continue in the post that they are holding and they should be dismissed from service.

11.With the above observations and direction, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

12.For reporting compliance, the Registry is directed to list this matter on 29.02.2018.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

Sgl

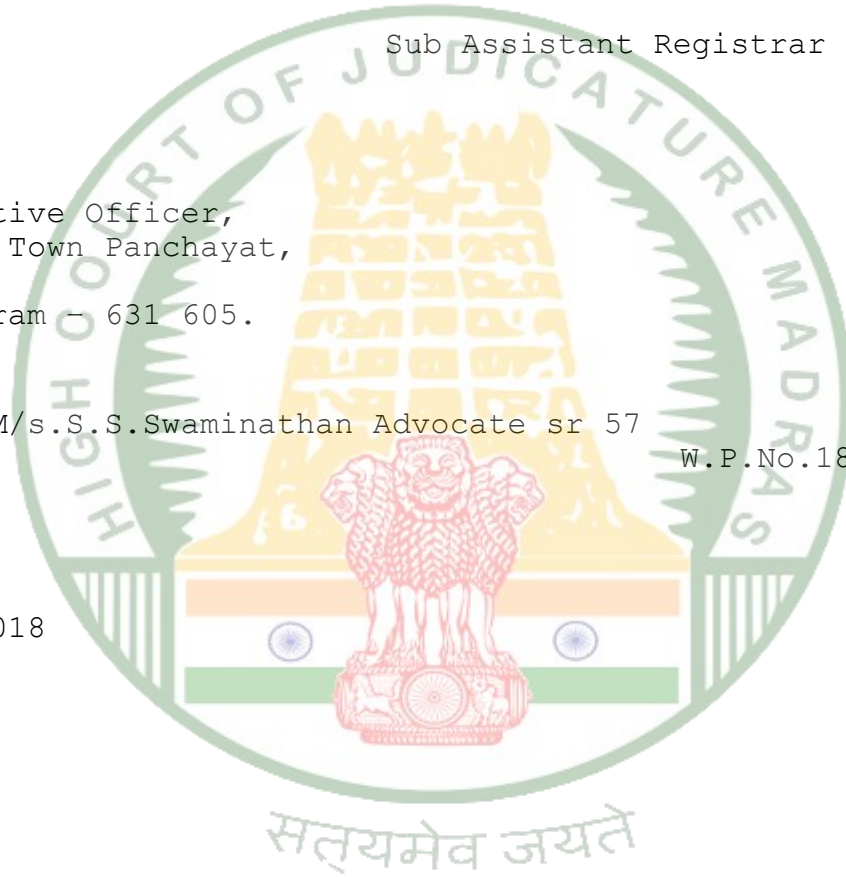
To

The Executive Officer,
Walajabad Town Panchayat,
Walajabad,
Kancheepuram - 631 605.

+1 cc to M/s.S.S.Swaminathan Advocate sr 57

W.P.No.18664 of 2017

aa23/01/2018



WEB COPY