

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2018

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

WP.No.14712 of 2018
and
W.M.P.No.17393 of 2018

K.Abimannan

...Petitioner

Vs.

1. The Tahsildar,
Tindivanam,
Villupuram District.

2. The Special Officer,
Melmavillangai Panchayat,
Block Development Officer,
Panchayat Union,
Olakkur.

...Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, call for the records in notice dated 31.05.2018 issued by the second respondent and quash the same.

For Petitioner : Mr.D.S.Ramesh

For Respondents : Mr.R.Udhya Kumar,
Additional Government Pleader

ORDER

[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 accepts notice for the respondents.

2. The petitioner claims to be the owner of the vacant land admeasuring to an extent of 00032 sq.m of land in S.No.57/12 at Melmaavilangai Village, Tindivanam Taluk, Villupuram District and he further claims to be in possession of the land admeasuring to an extent of about 237 sq.m in S.No.57/13, wherein he has put up a washroom. The petitioner also claims that he was in possession of the land in S.No.57/13 for nearly two decades. However, to his shock and surprise, the 2nd respondent has invoked the provisions of the Tamil Nadu Land Encroachment Act, 1905, by issuing impugned notice under Section 7 dated 31.05.2018 and challenging the legality of the same, the petitioner came forward to file this writ petition.

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3. The learned counsel appearing for the petitioner would submit that since, the petitioner is in possession of the land, which is said to have been encroached by him, continuously for more than two decades and that

he has also put up a washroom only, the action taken on the part of the 1st respondent is wholly unsustainable and therefore prays for quashment of the same.

4. Per contra, Mr.R.Udhaya Kumar, learned Additional Government Pleader appearing for the respondents 1 and 2 would submit that even as per his own admission, the petitioner is an encroacher of the land admeasuring to an extent of 1.80 m x 0.7 m in S.No.57/13 which is classified as "Sarkar Poromboke" and put up the washroom, and therefore impugned notice has been issued under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 and it will be followed by notice under Section 6 of the same Act. The learned Additional Government Pleader also on instructions would submit that due process of law has been followed before removing the encroachments on the part of the petitioner and prays for dismissal of this writ petition.

5. It is relevant to extract Sections 7 and 6 of the Tamil Nadu Land Encroachment Act, 1905:

"Section 6: Liability of person unauthorisedly occupying land to summary eviction, forfeiture of crops etc.- (1) Any person unauthorisedly occupying any land for which he is liable to pay assessment under section

3 or section 3-A may be summarily evicted by the Collector or subject to his control, by the Tahsildar or Deputy Tahsildar or any other officer authorised by the State Government in this behalf (hereinafter referred as the Authorised Officer) and any crop or other product raised on the land shall be liable to forfeiture and any building or other construction erected or anything deposited thereon shall also, if not removed by him after such written notice as the Collector or subject to his control, the Tahsildar or Deputy Tahsildar or authorised officer may deem reasonable, be liable to forfeiture. Forfeitures under this section shall be adjudged by the Collector or subject to his control by the Tahsildar, or Deputy Tahsildar, or authorised Officer and any property so forfeited shall be disposed of as the Collector or subject to his control the Tahsildar or Deputy Tahsildar or authorised officer) may direct.

(2) An eviction under this section shall be made in the following manner namely: By serving a notice in the manner provided in section 7 on the person reputed to be in occupation or his agent requiring him within such time as the Collector or the Tahsildar or Deputy Tahsildar or Authorised Officer may deem reasonable after receipt of the said notice to vacate the land, and, if such notice is not obeyed, by removing or deputing a subordinate to remove any person who may refuse to vacate the same, and if the officer removing any such person shall be resisted or obstructed by any person, the Collector or the Tahsildar, or Deputy Tahsildar or authorised officer shall hold a summary inquiry into the facts of the case, and if satisfied

that the resistance or obstruction was without any just cause and that such resistance or obstruction still continues, may issue a warrant for the arrest of the said person and on his appearance commit him to close custody in the office of the Collector or of any Tahsildar or Deputy Tahsildar or authorised officer for such period not exceeding 30 days as may be necessary to prevent the continuance of such obstruction or resistance or may send him with a warrant in the form of the schedule for imprisonment in the civil jail of the district for the like period.

Provided that no person so committed or imprisoned under this section shall be liable to be prosecuted under sections 183, 186 or 188 of the Indian Penal Code in respect of the same facts.

(3) Any authorised officer taking proceedings under this section shall make a report in writing containing such particulars as may be specified in rules or orders made under Section 8 to the Collector, Tahsildar or Deputy Tasildar having jurisdiction.

Section 7: Prior notice to person in occupation: Before taking proceedings under section 6 the Collector or ahsildar or Deputy Tahsildar or Revenue Inspector or any authorised officer or any other officer specified by the State Government in this behalf (not being an authorised officer) (hereinafter referred to as the 'specified officer as the case may be shall cause to be served on the person reported to be in unauthorised occupation of land being the property of Government a notice specifying the land so occupied and

calling on him to show cause before a certain date why he should not be proceeded against under section 6.

Such notice shall be served in the manner prescribed in section 25 of the Tamil Nadu Revenue Recovery Act, 1864, or in such other manner as the State Government by rules or orders under Section 8 may direct.

Provided that no such notice shall be necessary in the case of any person unauthorisedly occupying any land, if he had been previously evicted from such land under section 6 or if he has previously vacated such land voluntarily after the receipt of a notice under section 5-B or under this section:

Provided further that where the notice under this section is caused to be served by any Revenue Inspector or any specified officer he shall require the person reputed to be in unauthorised occupation of the land to show cause against such notice to the Collector, Tahsildar, Deputy Tahsildar or authorised person having jurisdiction, as the case may be and shall also make a report in writing containing such particulars as may be specified in rules or orders made under section 8 to the Collector, Tahsildar, Deputy Tahsildar or authorised person having jurisdiction, as the case may be".

6. This Court has considered the rival submissions and also perused the materials placed before it.

7. The 1st respondent before removing the encroachments is under statutory obligation to follow the provisions of Tamil Nadu Land

Encroachment Act, 1905. Accordingly, the 1st respondent has issued the impugned notice under Section 7 of the said Act and it will be followed by Section 6 of the said Act. If the petitioner is aggrieved by the initiation of the action under the provisions of the Tamil Nadu Land Encroachment Act, 1905, he is always having effective alternate remedy under Section 10 of the said Act to avail the appeal remedy before the appellate authority.

8. In the considered opinion of this Court, the writ petition is prematured for the reason that before removing encroachment, the 1st respondent has to issue notice under Section 6 and thereafter, only cause removal of encroachments and even for that action also, the petitioner is having a effective alternate remedy.

9. With the above observation, the writ petition stands dismissed .
No costs. Consequently connected miscellaneous petition is closed.

{M.S.N.J} {G.K.I.J}
19.06.2018

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M.SATHYANARAYANAN, J.
AND
G.K.ILANTHIRAIYAN, J.
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Index : /No
Internet: Yes
Speaking Order

To

1. The Tahsildar,
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Villupuram District.
2. The Special Officer,
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