

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.03.2018

Coram

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

W.P.No.1576 of 2018 and
W.M.P.No. 1976 of 2018

Dhandapani .. Petitioner

Vs.

1. The Tahsildar
Taluk Office, Avinashi,
Avinashi - 641 655
Thiruppur District

2. The Revenue Inspector,
Land Revenue Inspector East,
Avinashi Taluk Office,
Avinashi 641 655
Tiruppur District

..Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the issue of the impugned order in Na.Ka.No.4650/2017/A6 dated 20.10.2017 passed by the 1st Respondent herein to quash the same and direct the 1st Respondent not to evict the Petitioner from his dwelling house, situated in Survey No.81/82, Door No.100-K, Seenivasapuram, Avinashi 641 655, Avinashi Taluk, Tiruppur District comprising extent of 4752 Square feet with title house, without following due process of law.

For Petitioner: Ms.K.Kavitha for
Mr.P.Kalimuthu

For Respondents: Mr.R.Udhayakumar
Additional Government Pleader

O R D E R

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

Heard the Learned Counsel for the Petitioner and the Learned Additional Government Pleader for the Respondents.

2. According to the Petitioner, his late father, lived in the Petitioned property bearing Survey Nos.81 and 82 for more than 60 years and after his death, Petitioner is living in the

property along with his sons, namely, Senthilvel and Ananda kumar and daughter-in-laws namely, Banumathi and Ranganayaki and his grand children, namely, Uma Maheswari, Amutha Valli, Thirunanasampatham, Thaigachala Moorthy and Padmavathi.

3. The case of the Petitioner is that the 1st Respondent had failed to apply his mind before issuing Section 6 Notice under Tamilnadu Land Encroachment Act, 1905. The Petitioner is not only residing in the said property, but all his legal heirs are there for more than 60 years and in fact, legal heirs have obtained Voters ID Card issued by the Respondents. In the Petitioned Property there are eight portions of the house, wherein his legal heirs are residing.

4. The specific plea of the Petitioner is that the property in question was occupied by his father as vacant site before the statute period of 60 years and it is poramboke land and in that, his father has constructed a 'Thatched' house and was residing along with him without any hindrance of the Respondents. Later, he had altered the constructed thatched house into tiled house. The property is in his possession and enjoyment and also for the house property, the house tax was levelled and Tax Assessment No.1222 was assigned and given Door No.100.K.I with water tap connection and domestic electricity service connection to the house property.

5. It comes to be known that the Avinashi Panchayat Board had issued a notice to the Petitioner on 26.07.1997 to remove the construction for laying underground village tap over his properties and also dug the ground in his properties, hence he was perforced to file a Civil Suit in O.S.No.116 of 1997 and also sought a relief of Interim Injunction in I.A.No.218 of 1997 restraining the defendant and every elected members from any way interfering with the peaceful possession and enjoyment of the said property. The Interim Injunction was granted in favour of his property by the trial Court and the Civil Case was also withdrawn by him.

6. The crystalline stand taken on behalf of the Petitioner is that he along with legal heirs have become title holder of the property mentioned supra, in which he is residing along with family members. He had filed the Memorandum of Appeal under Section 10(A) of the Tamilnadu Land Encroachment Act, 1905 before the competent forum seeking necessary relief. He had also sought to direct the 1st Respondent not to evict the Petitioner from his dwelling house situated at Survey Nos.81 and 82, Door No.100-K Seenivasapuram, Avinashi - 641 655, Avinashi Taluk, Tiruppur District comprising an extent of 4752 Square feet with title house, without following due process of Law and the same was numbered as 4742 / A 5 / 2017/A5 and the said Appeal is

pending.

7. The Learned Counsel for the Petitioner contends that the impugned proceedings of the 1st Respondent dated 20.10.2017 is an illegal and unsustainable one. Also that the Petitioner cannot be characterised as a 'Tresspasser' by any stretch of imagination and even the Hon'ble Supreme Court had held that even a tress passer cannot be evicted without due legal process.

8. The Learned Counsel for the Petitioner comes out with a plea that the Respondents are so careless in their endeavour to evict the Petitioner at any cost and they had not adhered to the procedure laid down by Law. Furthermore, even assuming without admitting that the 1st Respondent has jurisdiction or authority, the District Collector, acting as Quasi-Judicial Authority, according to the Petitioner, should have observed the Principles of Natural Justice and ought to have ascertained all the facts taking into account the aforesaid removal notice itself.

9. Per contra, it is the submission of the Learned Additional Government Pleader appearing for the Respondents 1 and 2 submitted that Survey Field Nos.80 and 81 of Revenue Department, Avinashi Taluk are classified as 'Reserve Forest' in revenue old records and in fact, the aforesaid Survey Field Nos. 80 and 81 are situated on Nallaru River throughout the rainy season, according to the Respondents, the rainwater enters the encroached houses in Nallaru River and hence the people living in the bund portion of the said river are evacuated and kept in Thirumana Mandapams and Schools in Avinashi by Revenue Officials in every years. As a matter of fact, the width of the Nallaru River Survey Field Nos.80 and 81 (78) has been reduced due to encroachment made by the Petitioner and others. सत्यमेव जयते

10. The 1st Respondent had received the encroachers list from the Village Administrative Officer, Avinashi and then, he had ordered to remove the encroachment occupied by the Petitioner, but, the Petitioner, according to the Respondents, still continue to reside near the Nallaru River and also that, he had encroached the bund portion and other portions of Nallaru river in Survey Filed Nos.80& 81 (78). Although 2617.3/4 square feet of land and house belongs to the Petitioner, by means of a Sale Deed bearing Document No.1851/2002, registered in Avinashi SRO, in Survey Field No.360/1,2,3, he encroached and occupied a certain huge extent of Government land in Survey Field Nos.(80 and 81) 78 and erected 8 houses. In fact, he had rented out the house for monthly rent and earns monthly income of Rs.2,000/-. He had also provided electricity connections for such houses bearing

connection Nos.923 and 1480 from Tamilnadu Electricity Board.

11. It is represented on behalf of the Respondents that the 1st Respondent is periodically inspecting the survey field and other places with the Subordinates and as per letter received from the District Collector, Thiruppur dated 13.07.2017, the proceedings for eviction of encroachments were issued by him on 20.10.2017. In this connection, the Learned Additional Government Pleader for the Respondents pointed out that all the legal proceedings were followed by the 1st Respondent and in respect of memo from the District Collector, Thiruppur, on 21.07.2017, he had called for the Revenue Inspector of Avinashi (East), summon was issued to the Writ Petitioner on 13.10.2017 and enquiry was later on fixed on 20.10.2017 and in fact, summon was duly served on the Petitioner. The Petitioner, appeared in person on 20.10.2017 and gave statement and no documents were filed on his side. Only after perusing records and statements, final order has been passed. The said order was also received by the Petitioner, in fact, the Petitioner was provided with sufficient time and opportunity and he had preferred an Appeal against the impugned order before the Sub Collector, Thiruppur and the said appeal is pending in Sub Collector's Office, Thiruppur.

12. The Learned Additional Government Pleader for the Respondents contends that in fact, during the course of enquiry, the Petitioner had furnished a statement that he had constructed a house in Government Poramboke and in which he is residing along with his grand children and also he is paying electricity charges, house tax, water tax and he had not let out the house to others and also he had categorically mentioned that for an action to be taken by the Government, he agrees to abide by the same.

13. After furnishing or giving his sworn statement on 20.10.2017 before the 1st Respondent, whereby and whereunder the Petitioner had tacitly admitted that in the Petitioned property belonging to the Government poramboke, he had constructed 8 houses and residing along with family and with grand children etc., then, this Court is of the considered view that the Petitioner cannot occupy or continue to squat in Survey Nos.80 and 81 (78) of Revenue Department, Avinashi Taluk, situated in Nallaru River, in fact, according to the Respondents, the said survey land mentioned supra got reduced because of the encroachment made by the Petitioner and others. When the Petitioner himself had admitted that he is residing / squatting in the property in Survey Nos.80 and 81 (78) and when he had encroached the bunk portion of Nallaru River, then, this Court is of the earnest view that the Petitioner is liable to be evicted from the said encroachment in Survey

Nos.80 and 81(78) within a period of two weeks from the date of receipt of copy of this order. Further, as an encroacher, when the Petitioner is admittedly not the owner of the land where he resides with his family and grand children, then, he is to move out from the said place. Viewed in that perspective, this Court, is of the considered view that the impugned order passed by the 1st Respondent dated 20.10.2017 does not suffer from any legal infirmities or material irregularities in the eye of Law and the Writ Petition sans merits.

14. Before parting with the case, this Court makes it clear that although, the Petitioner had preferred an Appeal before the Sub Collector and the same is pending, in view of the fact that he had approached this Court by filing present Writ Petition and this Court has dismissed the present Writ Petition by assigning reasons interalia to the effect that the Petitioner is an encroacher and he is squatting on the property belonging to that of Government and also encroached bunk portion and other portion of Nallaru river in Survey Nos.80-81(78), the Appeal preferred by him will be of no avail and it is only Otiose one.

15. In fine, the Writ Petition is dismissed leaving the parties to bear their own costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ssd

To

1. The Tahsildar
Taluk Office, Avinashi,
Avinashi - 641 655
Thiruppur District
2. The Revenue Inspector,
Land Revenue Inspector East,
Avinashi Taluk Office,
Avinashi 641 655
Tiruppur District

+lcc to the Government Pleader, S.R.No.17441

W.P.No.1576 of 2018 and
W.M.P.No. 1976 of 2018

kj (CO)

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