

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2018

CORAM

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

WP.No.15953 of 2018
and WMP.No.18964 of 2018

Dhanapandian

...Petitioner

Vs.

1.The District Collector,
District Collectorate,
Villupuram District.

2.The Tahsildar,
Kallakurichi Taluk,
Villupuram District.

3.The Block Development Officer,
Kallakurichi Union and Taluk,
Villupuram District.

...Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the impugned notice dated 27.10.2017 issued by the 3rd respondent and quash the same.

For Petitioner : Mr.V.R.Kamalanathan

For Respondents : Mr.R.Udhaya 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.Udhaya Kumar, learned Additional Government Pleader accepts notice on behalf of the respondents.

2. The petitioner would aver that his father Ayyavoo was the absolute owner of the agricultural lands comprised in S.Nos.379/1, 3, 4, 3.80/3 and 381/1A in Veeracholapuram East Village, Kallakurichi Taluk, Villupuram District and it is relevant to extract the details of the land:

Survey.No.	Sub- Division	Nanjai		Punjai	
		Extent Acre	Levy (Rs.)	Extent Acre	Levy (Rs.)
379	1	---	---	0-66.50	2.25
379	3	---	---	0 – 9.50	0.33
379	4	---	---	0-16.00	0.53
379	3	---	---	0-40.50	1.12
381	1A	---	---	0-48.50	1.34
				1-81.00	5.57

3. The petitioner would further aver that the Patta No.36, continues to stand in the name of his father viz., late Ayyavoo and adjacent to his land, there is a water channel in S.Nos.379/2 and 380/2. He along with his father used to cultivate sugar cane, corn and groundnuts in the aforesaid lands. The petitioner further submit that his father was issued with notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 dated 27.10.2017 alleging encroachment of 0.23.03 hectare in S.Nos.379/2 and 380/2 and his father submitted a representation to the concerned authorities. His father passed away on 22.04.2018. However, all of a sudden, without considering the representation submitted by his father, Revenue Officials has brought forthwith excavators to remove the alleged encroachment. In that process, the respondents sought to demolish the sugar cane crops cultivated in his own land and therefore he is constrained to approach this Court by filing this writ petition.

4. Mr.V.R.Kamalanadhan, learned counsel appearing for the petitioner has invited the attention of this Court to the typed set of documents as well as photographs and made a submission that sofar, no notice under Section 6 of the said Act has been issued and in the absence

of the same, it is not open to the respondents to straight away cause eviction of the alleged encroachment and therefore prays for appropriate direction.

5. *Per contra*, Mr.R.Udhaya Kumar, learned Additional Government Pleader appearing for the respondents would submit that ever as per his own admission, the petitioner is an encroacher of the water course in S.Nos.379/2 and 380/2, and due process of law would be followed before evicting the petitioner for removing the encroachment.

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

7. A perusal of the Patta No.36, which stands in the name of the petitioner's father would disclose that he is not the owner of the land in S.Nos.379/2 and 380/2 and it is the claim of the petitioner that the said land lies adjacent to the petitioner's land and along with petitioner's land sugar cane and other cultivation is going on. A perusal of the impugned Section 7 notice, would also disclose that the lands in S.Nos.379/2 and 380/2 is classified as 'Odai Poromboke'.

8. At this juncture, it is relevant to extract Section 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 seciton 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 reputed 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”.

9. In the light of the said provisions, the respondents 2 and 3 are under obligation to follow the said provision under Tamil Nadu Land Encroachment Act, 1905, before causing removal of encroachment.

10. This Court, taking into consideration the above facts and circumstances, and without going into the merits of the claim projected by the petitioner, directs the respondents 2 and 3 to follow the due process of law in terms of the provisions of Tamil Nadu Land Encroachment Act, 1905 and remove the alleged encroachment within a period of ten weeks from the date of receipt of a copy of this order and the petitioner if so advised, he is always at liberty to avail his remedy in accordance with law with regard to the action proposed to be taken under the provisions of Tamil Nadu Land Encroachment Act, 1905 and till such time, the possession of the petitioner from the land in S.Nos.379/2 and 380/2 shall not be disturbed and it is also made clear that till the respondents 2 and 3 complete the said exercise, the petitioner shall not create any third party right in respect of the site in question and shall not alter the physical features also.

11. This writ petition is disposed of with the above directions. No costs. Consequently connected miscellaneous petition is closed.

[M.S.N.J] [G.K.I.J]
28.06.2018

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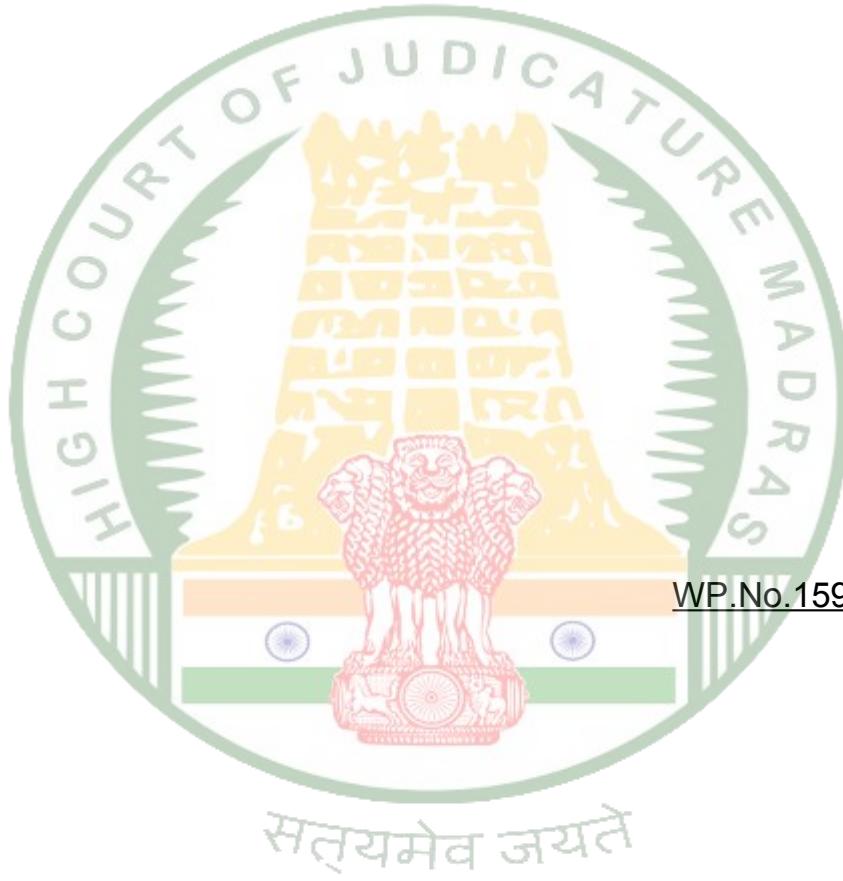
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