

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:29.01.2018

Coram

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

W.P.No.1658 of 2018

A.Perumal

.. Petitioner

Vs.

The Tahsildar,
Arani Taluk,
Tiruvannamalai District.

.. Respondent

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records in respect of the impugned order of eviction passed by the respondent in Na.Ka.G1/2226/20105, dated 06.12.2017 and quash the same.

For Petitioner : Ms.K.Krishnaveni

For Respondent : Mr.A.N.Thambidurai
Special Government Pleader

ORDER

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

Heard the Learned Counsel for the Petitioner.
Mr.A.N.Thambidurai, Learned Special Government Pleader takes
notice for the Respondent. By consent, the main Writ Petition is

taken up for disposal.

2. According to the Petitioner, his father Adikesavan (since deceased) occupied an extent of 204 sq. ft. in T.S.No.60, E1 Block of Arani Town, more than 50 years ago running a small Pandal business to eke out his livelihood. As a matter of fact, the Petitioner's family was in occupation of the said extent for more than 50 years and the remaining extent was occupied by others. In this connection, the stand of the Petitioner is that his father's possession and enjoyment was recognised atleast from the year 1970 as per the Chitta issued by the revenue authorities. Indeed, in the year 1982, the revenue authority had recommended for grant of patta in the name of Petitioner's father.

3. The version of the Petitioner is that his father died in the year 1977, whereupon he was in possession and enjoyment for the past 30 years, which is evident from the registration certificate issued by the commercial tax department, professional tax receipt issued by the Arani Municipality and E.B. Tariff receipts issued by the Electricity Board. Apart from that, the plea taken on behalf of the Petitioner is that the Respondent has recognised the Petitioner's

exclusive possession over 204 sq.ft., by levying B Memo charges. Added further, the Petitioner's father had submitted application seeking for issuance of patta and sent reminders to the District Collector, Thiruvannamalai on various dates. However, no action has been taken by them.

4. At this juncture, the Learned Counsel for the Petitioner points out that the property in question has been described or classified as "Ryotwari House Site" in town Survey Register and the kist receipts, property tax receipts, house tax receipts stood in the name of Petitioner's father and after the demise of the Petitioner's father, the receipts are issued in the name of the Petitioner, which would lend support to the Petitioner's actual physical possession and enjoyment of the property. Furthermore, the property in the Petitioner's possession is not affecting the free flow of traffic, since it is located away from the road.

5. It comes to be known that the Petitioner is in possession of the property which is classified as "Sarkar Vacant Land" in the old village records for over and above the statutory period of limitation for seeking patta.

6. Besides this, the Survey and Settlement Officer, Thiruvannamalai, through communication dated 06.02.2005, has categorically recognised the Petitioner's possession and enjoyment of the property and also recommended for grant of Patta in his proceedings addressed to the Director of Survey and Settlement, at Chepauk, Chennai.

7. When that be the fact situation to the Petitioner's shock and dismay, the Respondent had issued a notice dated 18.11.2017 under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 requiring the Petitioner to show cause as to why an action for eviction should not be taken against him on or before 06.12.2017. Immediately, the Petitioner appeared before the Respondent on 01.12.2017 and submitted a reply to the show cause notice.

8. The core contention advanced on behalf of the Petitioner is that the Respondent had not conducted a single enquiry and without conducting any enquiry has arbitrarily passed the final orders dated 06.12.2017 for eviction under Section 6 of the Tamil Nadu Land Encroachment Act, 1905, which is an illegal one.

9.It may not be out of place for this Court to make a pertinent mention that the impugned notice under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 dated 06.12.2017 addressed to the Writ Petitioner does not expressly referred to any issuance of earlier notice by the Respondent on 18.11.2017 under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 and also the reply submitted by the Petitioner on 01.12.2017. It appears that the representation/reply furnished by the Petitioner has not been taken into account by the Respondent at the time of passing final orders for eviction under Section 6 of the Act, 1905 dated 06.12.2017 in respect of the Petitioner.

10.As such, this Court is of the considered view that without passing a reasoned speaking order on qualitative and quantitative terms and when the impugned notice dated 06.12.2017 issued under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 does not refer to the reply to the Petitioner dated 01.12.2017 (for the issuance of notice dated 18.11.2017 under Section 7 of the Act), this Court is of the considered view that there appears to be non application of mind by the Respondent at the time of passing

final orders for eviction under Section 6 of the Act dated 06.12.2017. Therefore, this Court is left with no option, but to interfere with the said order dated 06.12.2017 (issued under Section 6 of the Act) in respect of the Petitioner and sets aside the same, in furtherance of substantial cause of Justice. Consequently, the Writ Petition succeeds.

11. In view of the fact that this Court has allowed the present Writ Petition, the same will not preclude the Respondent/Tahsildar, Arani Taluk, Tiruvannamalai District to issue fresh notice to the Petitioner, within a period of one week from the date of receipt of a copy of this order. Soon after receipt of the fresh notice from the Respondent, it is incumbent on the Petitioner to furnish a reply to the fresh show cause notice, within a period of two weeks thereafter. The Respondent, after taking into consideration of the reply submitted by the Petitioner, is to pass a speaking/reasoned final orders, after considering the objections, of course, by strictly adhering to the Principles of Natural Justice and also, by issuing notice to the Complainant, if any and others concerned, within a period of four weeks thereafter. It cannot be gainsaid that the final orders shall be passed by the Respondent, by adverting to each and

every point raised by the Petitioner in his reply/representation/objection, as the case may be and to answer the same in an objective fashion.

12. With the aforesaid observations and directions, the Writ Petition stands disposed of. The impugned order dated 06.12.2017 is hereby set aside by this Court for the reasons assigned in this Writ Petition. No costs.

(M.V., J.) (S.V.N., J.)

29.01.2018

Speaking Order

Index : Yes / No

Internet : Yes / No

Sgl

To

1. The Tahsildar,
Arani Taluk,
Tiruvannamalai District.

2. The Government Advocate,
High Court, Madras.

M.VENUGOPAL, J.
and
S.VAIDYANATHAN, J.

Sgl



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