

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2018

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P. No. 18825 of 2018
&
W.M.P. No. 22186 of 2018

S.P. Thangavelu ..Petitioner

Vs.

1. The District Collector,
Salem District at Salem.
2. Tahsildar,
Omalur Taluk, Omalur,
Salem District.
3. The Executive Officer,
Tharamangalam Town Panchayat,
Tharamangalam, Salem District.
4. The Revenue Secretary,
Government of Tamil Nadu,
Fort St. George, Chennai-9.

(R4 suo motu impleaded by this Court by
order dated 23.07.2018) ..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Mandamus to forbear the respondents from taking further action, including eviction of the petitioner from the lands comprised in Grama Natham Old Survey No. 171/2, New Grama Natham Survey Nos. 333/13 and 14, Tharamangalam Village, Omalur Taluk, Salem District, till the expiry of time granted under Section 11(1) for filing the revision petition under Section 10-A of Tamil Nadu Land Encroachment Act against the order of eviction passed by the 1st respondent in Na.Ka.2844/2018/K2 dated 19.07.2018.

For Petitioner :: Mr.K. Premkumar
For Respondents:: Mr.R. Udhayakumar,
Addl.Govt. Pleader for
R1 to R4

This writ petition is filed for issue of a Writ of Mandamus forbearing the respondents from taking further action, including eviction of the petitioner from the lands comprised in Grama Natham Old Survey No. 171/2, New Grama Natham Survey Nos. 333/13 and 14, Tharamangalam Village, Omalur Taluk, Salem District, till the expiry of time granted under Section 11(1) for filing the revision petition under Section 10-A of Tamil Nadu Land Encroachment Act against the order of eviction passed by the 1st respondent in Na.Ka.2844/2018/K2 dated 19.07.2018, since the appeal filed by the petitioner before the 1st respondent claiming ownership of the lands comprised in Grama Natham Old S.No. 171/2, new Grama Natham Survey Nos. 333/13 and 14 of Taramangalam Village, Omalur Taluk, Salem District, has been rejected.

2. According to the petitioner, the lands comprised in Old Survey No. 171/2, are "Grama Natham" lands and it belongs to him and his family members. However, during the year 1994, under the Natham Land Scheme of the Government, the lands comprised in Old Survey No. 171/2 have been re-classified as "Government Poramboke" instead of Grama Natham. Based on that, the respondents are trying to evict the petitioner. One Ganesan, a neighbour of the petitioner filed W.P. No. 9078 of 2017 before this Court alleging that the petitioner has encroached upon public pathway and the well comprised in Survey Nos. 333/13 and 14, Grama Natham, Tharamangalam Village and this Court, by order dated 17.04.2017 directed the Tahsildar, Omalur Taluk, to take action on the complaint of the said Ganesan in accordance with law after putting on notice, all concerned. However, according to the petitioner, without notice of hearing, holding an enquiry and affording an opportunity of hearing to the petitioner, the respondents straightaway tried to demolish the petitioner's building, consequent to which, the petitioner submitted a representation dated 29.07.2017 to the respondents with a request not to demolish the building without following due process of law. In spite of the same, without any notice or enquiry or opportunity of hearing, the petitioner received an order dated 18.12.2017 from the 3rd respondent asking him to demolish the building in the survey number in question. As against the same, the petitioner preferred an appeal before the 1st respondent and also sought interim stay of the order of the 3rd respondent herein. Since it was not considered, the petitioner filed a writ petition in W.P. NO. 1989 of 2018 and the said writ petition was disposed of, by order dated 31.01.2018, with a direction to the District Collector, Salem District to pass final orders in the subject matter in issue within a stipulated time. Now, by the impugned order, the said appeal has been rejected by the District Collector. Hence, the present writ petition for the relief aforesaid.

3. Heard Mr.K. Premkumar, learned counsel for the petitioner and Mr.R. Udhayakumar, learned Additional Government Pleader for the respondents.

4. Dehors the merits of the case, as rightly pointed out by the learned counsel for the petitioner, the impugned order has been passed by the 1st respondent only on 19.07.2018 and as against the same, a revision lies to the Government within 30 days and the appropriate authority to dispose of the revision is the Revenue Secretary, who is not a party to the writ petition. Hence, The Revenue Secretary, Government of Tamil Nadu, Fort St. George, Chennai -9, is suo motu impleaded by this Court as 4th respondent to the writ petition and Mr.R. Udhayakumar, learned Additional Government Pleader takes notice on behalf of the newly impleaded 4th respondent.

5. Since only four days have elapsed from the date of the order passed rejecting the petitioner's appeal, the respondents would not be in a position to take any coercive steps to evict the petitioner as it can be done only after 30 days, as the time limit to prefer a revision would expire thereafter. In case, the petitioner prefers a revision to the Revenue Secretary, Government of Tamil Nadu, within the time limit prescribed, then the same shall be disposed of by the authority within 12 weeks from the date of receipt of a copy of this order. Till such time, the orders are passed by the authority on the revision to be filed by the petitioner or in case, revision is not filed, till the expiry of 30 days from the date of the impugned order, the petitioner's possession shall not be disturbed.

6. The writ petition is disposed of with the above observation. No costs. Connected W.M.P. is closed.

Sd/-

Assistant Registrar(CSO)

//True copy//

Sub Assistant Registrar

nv

1. The District Collector,
Salem District at Salem.

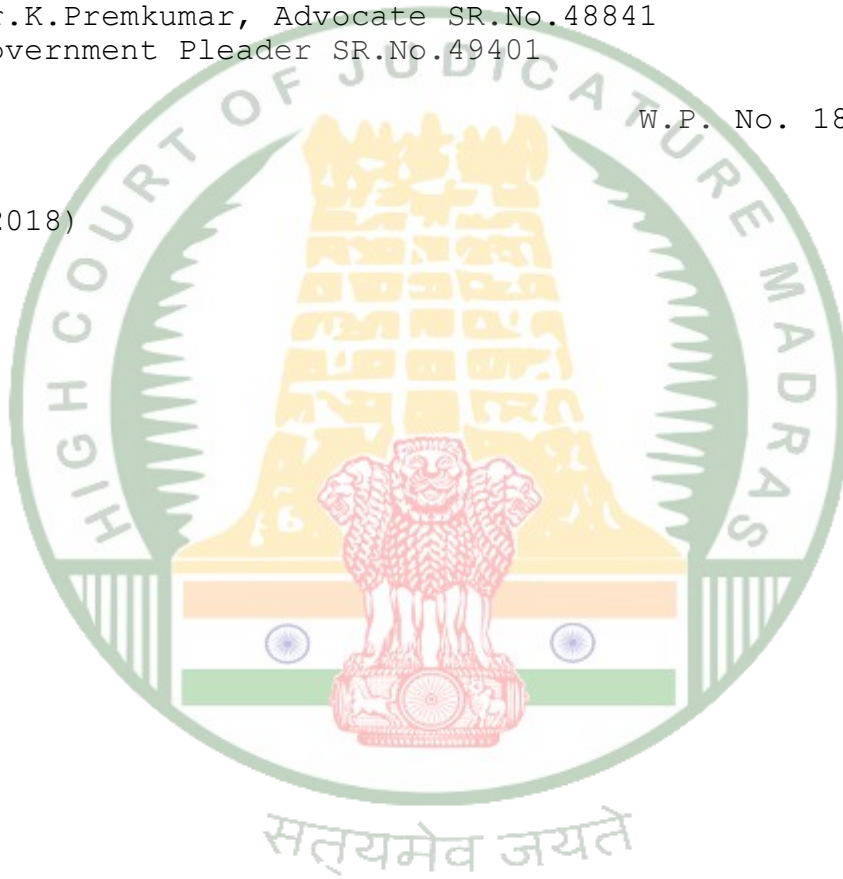
2. Tahsildar,
Omalur Taluk, Omalur,
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3. The Executive Officer,
Tharamangalam Town Panchayat,
Tharamangalam, Salem District.
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Fort St. George, Chennai-9.

+2cc to Mr.K.Premkumar, Advocate SR.No.48841

+1cc to Government Pleader SR.No.49401

W.P. No. 18825 of 2018

PP(CO)
GN(23/08/2018)



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