

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:07.02.2018

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL
AND

THE HONOURABLE Mr. JUSTICE S.VAIDYANATHAN

W.P.No.1944 of 2018 and
W.M.P.Nos.2437 and 2438 of 2018

Mani

.. Petitioner

Vs.

1.The District Collector,
(Collectorate Campus)
Perambalaur - 621 212.

2.The Block Development Officer,
(Panchayats Unions)
Veppur, Perambalaur - 621 717.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records relating to the impugned notice dated 07.12.2017 issued under Section 6 of the Land Encroachment Act, 1905 (Act 3 of 1905) issued by the Second Respondent in respect of house property measuring to an extent of 37.0 sq.mtrs comprised in S.No.58/14 and 34.0 sq. mtrs, in S.No.58/14, Kunnam Taluk, Perambalur District belonging to the Petitioner herein and to quash the same as illegal and unconstitutional and for a further direction to consider the Petitioner's Appeal on merits before the First Respondent.

For Petitioner : Ms.S.Deepika

For Respondents: Mr.A.N.Thambidurai

Special 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 Special Government Pleader for the Respondents.

2.No counter affidavit is filed on behalf of the Respondents. By consent on either side, the main Writ Petition is taken up for final disposal.

3. According to the Petitioner, he belongs to Downtrodden Community and live in Maruvathur Village since his birth. The petition mentioned property comes under the Natham Kudiyiruppu and he had constructed a tiled roof house and residing there for the past 30 years with his family and paying kist payments with the Panchayat. The Petitioner has Ration Card, Voter ID (issued in the year 1995), Aadhar Card etc. to show that he resides in the address at No.496, East Street, Maruvathur, Perambalur.

4. The stand of the Petitioner is that he along with other Downtrodden people are living in the colony and rest of the Caste Hindus live in the village and they are called as 'OOR' from the time immemorial in their villages as well as all over the Tamil Nadu State. The Petitioner has a Village Deity's Temple and his community people had denied entry by the Caste Hindu People for the reasons that they are treated them as untouchables, even in ultra modern Era. They have also made written representations before the Village People as well as the Competent Authorities, but they were denied their rights etc.

5. From the year 2012, till 2017 several Peace Committee meetings were held in the presence of Tahsildar, District Collector and RDO, SD and DSP and other police officials. The Team leading the Village (Caste Hindus) are stubborn in their thoughts that the dalits are not permitted to enter the temple premises during June 2017, the Village People decided to celebrate Car Festivals for their village deities such as "Thirumodai Malaichamy", "Sengamudayar", "Oor Chuthiyar", but they were not allowed to participate in the festival, when they objected for the same, communal clash occurred between village people and colony people. Later, another cases were registered against both the groups under Section 107/110 of the Cr.P.C. with a view to curb the communal threat and public tranquillity and the car festivals are stopped due to the aforesaid clash.

6. The Learned Counsel for the Petitioner points out that a Team leading the Caste Hindus have started taking the dead bodies inside the colony stating that the pathway leading to graveyard has been encroached by the Colony People. In fact, there is a 30 feet pathway existing from the main Road to graveyard. However, the Village people wanted to trouble them, for the reason that the Petitioner and others are demanding their worship right with the Village Deity. Also, there is a separate pathway leading to graveyard, a dalit house situated in the middle has been demolished by the colony people to enable the village people to have a sufficient space to enter into the pathway leading to graveyard. But, the village people demanding the other four houses situated in Natham Kudiyiruppu to be

demolished, which is in noway disturbing their entry to the pathway leading to the graveyard.

7.The main allegation against the Petitioner and others is that they had encroached the school compound, actually the school compound exists 15 feet away from the Petitioner's Natham Kudiyiruppu. In fact, the village people have taken this pathway issue with a view to counter the Petitioner's worship demand.

8.The Learned Counsel for the Petitioner vehemently contends that they are in possession and enjoyment of the property for the past 30 years without any disturbances from any one and the 2nd Respondent and other officials who are not able to convince the Caste Hindus in collusion with the Village People had issued the impugned Notice dated 07.12.2017 issued under Section 6 of the Tamil Nadu Land Encroachment Act, (Act III of 1905) as against five of colony people indicating an indirect threat to them. In short, all of a sudden, the 2nd Respondent had issued the impugned proceedings against the Petitioner and others.

9.The Learned Counsel for the Petitioner projects an argument that the impugned notice dated 07.12.2017 issued by the 2nd Respondent is an invalid one because of the reason that the Petitioner and others do not come under the purview of the Land Encroachment Act, 1905. Also that, the impugned notice is baseless because of the reason that the Petitioner is living in Natham Kudiyiruppu, by paying Kist payments. Further, it is represented on behalf of the Petitioner that the Petitioner and other people do not have any other dwelling place to live other than the property in question.

10.It is to be noted that the Petitioner has preferred an Appeal dated 17.01.2018 under Section 10 of the Tamil Nadu Land Encroachment Act, 1905 as against the Notice dated 17.01.2018 issued by the 2nd Respondent. As on date, the said Appeal preferred by the Petitioner is pending before the 1st Respondent and the same is not yet disposed of.

11.In this connection, the Learned Counsel for the Petitioner by pointing out to Section 7 of the Tamil Nadu Land Encroachment Act, 1905 puts forward a plea that Prior Notice to person in occupation as contemplated under Section 7 of the Act was not issued to the Petitioner and others and therefore, the impugned notice dated 07.12.2017 is an invalid one. Further, Section 6 impugned notice dated 07.12.2017 was issued by the 2nd Respondent without taking into account the objections of the present Writ Petitioner. As such, it is contended on behalf of the Petitioner that the impugned notice dated 07.12.2017 is bad in law. Also that, the 2nd Respondent, in the instant case, had

issued the impugned notice dated 07.12.2017 straight away and in fact, Section 6 of the Act speaks of 'Liability of person unauthorisedly occupying land to summary eviction, forfeiture of crops etc.'.

12.First and foremost, the authority specified under the Act is to issue 'Prior notice to person in occupation' as per Section 7 of the Tamil Nadu Land Encroachment Act, 1905. After receiving the objection from the affected party, hearing the said party in person, by providing due opportunity to the concerned persons (including the Complainant, if any, and also adhering to the Principles of Natural Justice is to pass a reasoned speaking order, of course, after applying his thinking mind. Furthermore, as per Section 6 of the Act, 'Summary Eviction Notice' will have to be issued by the authority concerned. In the present case, the 2nd Respondent had not resorted to the procedure envisaged under Section 7 of the Act, 1905 viz., issuance of prior notice in occupation viz., to the Petitioner. On this simple ground alone, this Court is inclined to set aside the impugned notice dated 07.12.2017 [issued under Section 6 of the Act, 1905] and allows the present Writ Petition. Consequently, the Writ Petition succeeds.

13.In fine, the Writ Petition is allowed. The impugned notice dated 07.12.2017 is hereby set aside for the reasons assigned in this Writ Petition. In view of the fact that the Appeal dated 17.01.2018 preferred by the Petitioner under Section 10 of the Act, [Act III of 1905] is pending on the file of the 1st Respondent, this Court, simpliciter, at this stage, without traversing upon the merits of the matter and also not delving deep into the matter, directs the 1st Respondent/District Collector, (Collectorate Campus), Perambalur, to take up the Appeal preferred by the Writ Petitioner and to dispose of the same, after providing necessary opportunity to the Petitioner, Complainant, if any and others concerned, by way of passing a reasoned order, of course, by adverting to/meeting out all the factual and legal points raised by the Petitioner in the Appeal Grounds, in the manner known to Law and in accordance with Law, within a period of four weeks from the date of receipt of copy of this order. Till final orders are passed, the Petitioner's possession and enjoyment of the property shall not be disturbed by any one much less the Respondents. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

Sgl

To

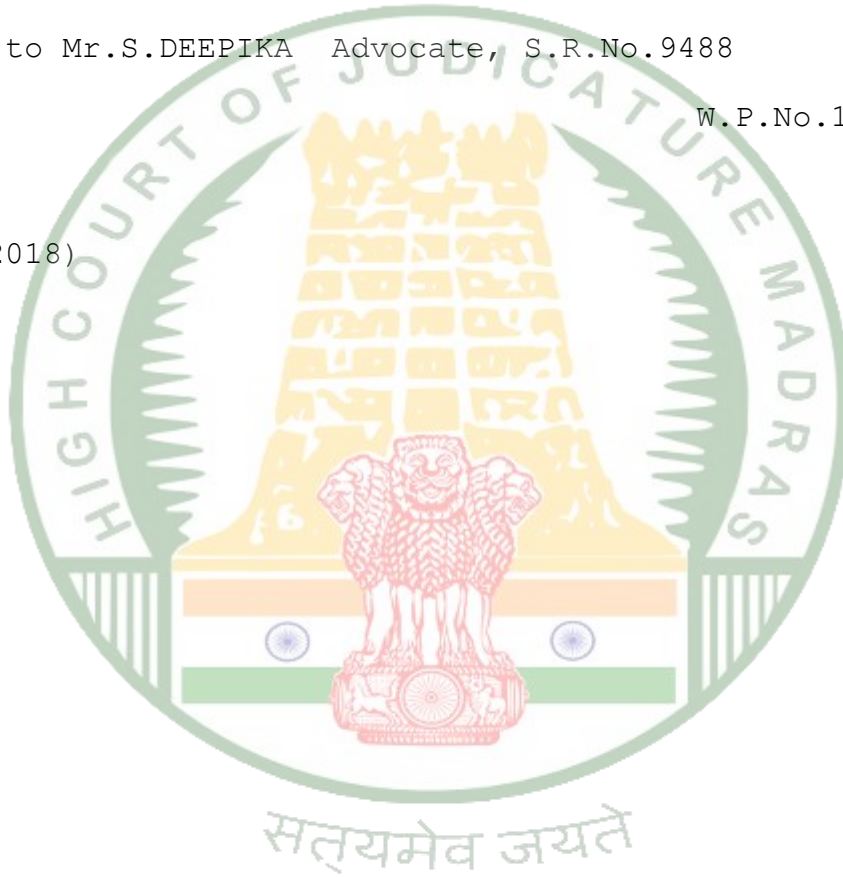
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+1cc to Mr.S.DEEPIKA Advocate, S.R.No.9488

W.P.No.1944 of 2018

TR(02/03/2018)



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