

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.11.2018

CORAM

THE HON'BLE MR JUSTICE M. VENUGOPAL
AND
THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

W.P.No.31377 of 2017
and WMP Nos.34487 and 34488 of 2017

Palladam Hi-Tech Weaving Park,
Represented by its Administrative Officer
M.S. Murali,
Address No.290/1,
Sukkampalayam Village,
KN Puram (PO), Palladam,
Tirupur District

... Petitioner

Vs.

1. State of Tamil Nadu,
Represented by District Collector,
Tirupur District.
2. Tahsildar,
Palladam, Tirupur District

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus to call for the records on the file of Second Respondent made in Order dated 28.11.2017 in respect of Palladam Hi-tech Weaving park and quash the same and consequently direct the Respondents not to interfere with the Petitioner's peaceful possession and enjoyment of the Petitioner's property.

For Petitioner : Mr.K. Venkatramani
Senior Counsel for
Ms.Selvi George

For Respondents: Mr.S.N. Parthasarathy
Govt. Advocate

ORDER

(Order of the Court made by M. VENUGOPAL, J.,)

The Petitioner has filed the Writ Petition seeking for issuance of a Writ of Certiorarified Mandamus to call for the records on the file of Second Respondent made in Order dated 28.11.2017 in respect of Palladam Hi-tech Weaving park and quash the same and consequently direct the Respondents not to interfere with the Petitioner's peaceful possession and enjoyment of the Petitioner's property.

2. Heard both sides.

3. According to the Petitioner/Palladam Hi-Tech Weaving Park, was incorporated under the Companies Act in October 2003. To establish this Company, a land measuring to an extent of 2.21 acres was purchased on 07.02.2005 in the name of the Company from one Ramachand N Dawani for a valid sale consideration by means of a registered Sale Deed bearing No.586/2005 on the file of Sub Registrar's Office, Palladam.

4. The Learned Senior Counsel appearing for the Petitioner submits that the Petitioner/Company is a Public Limited Company and in this 40% of the amount is given by the Central Government and 9% by the State Government as a subsidy. The prime object of the Petitioner's Company is to form, establish and run an Industrial Park to provide infrastructural facilities for a textile weaving industry and to make available such infrastructure facilities including industrial sheds developed in the Park to intending industrialist to establish their weaving factories in the Park at Palladam Coimbatore District to generate employment in and around Palladam.

5. Moreover, the Petitioner's Park spread over 65 acres of land with 90 sheds of various sizes of small and medium Textile units. The turnover of the Petitioner Company is Rs.520 crore per annum and it provides direct employment for 2500 persons and indirect employment for 3500 persons.

6. The Learned Senior Counsel also contends that Petitioner's land is situated in Survey No.285/2 in Semmipallayam village and ChukkamPalayam Village, PalladamTaluk, Coimbatore District. With a view to approach this patta land, the District Collector, Coimbatore was pleased to grant lease for extent of 1444 square meter in Survey No.285/3 and in Survey No.285/1 310 square meter and that such lease is in force as on date and the Petitioner is paying the lease rent as determined

without any default.

7. At this stage, the Learned Senior Counsel for the Petitioner Company comes out with a plea that the Village Administrative Officer, Sukkampalayam served a notice on 17.11.2017 (which was served on 25.11.2017) under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 to the Petitioner stating that the Petitioner had encroached on an extent of 256 square meter in Survey No.285/3 and it was also mentioned in the Notice that there was a building and a toilet in this land. That apart, the Petitioner was directed to raise its objection and explanation either in person or by written reply on or before 27.11.2017 to Tahsildar, PalladamTaluk/Second Respondent herein.

8. The prime contention advanced on behalf of the Petitioner Company is that the Petitioner forwarded a written reply to the notice addressed to the Tahsildar, PalladamTaluk/Second Respondent on 25.11.2017 and sent copies of the same to the District Collector, Sub Collector and District Revenue Officer of Tirupur District. In the reply, it was categorically mentioned by the Petitioner that it had not encroached upon any of the Government land and never acted against the Rules and provisions of the Act.

9. Yet another plea taken on behalf of the Petitioner is that without conducting any enquiry or surveying the land, an Order was issued under Section 6 of the Tamil Nadu Encroachment Act, 1905 on 28.11.2017 and that the Petitioner was directed to vacate and remove all the belongings on or before 04.12.2017 etc., failing which, it was further mentioned that the building and other belongings in the building will be forfeited.

10. In short, the substance of the plea taken on behalf of the Petitioner is that the Petitioner is not an 'Encroacher' and he is the absolute owner of the patta land situate in Suvey No.285/2 and that all the revenue documents including the patta stands in the name of the Petitioner.

11. Continuing further, it is the plea of the Petitioner that before passing the impugned order, survey should have been conducted on the subjected land when it was brought to the notice of the Respondents with substantial documents that the building and the toilet which are mentioned in the Impugned Order is not in Survey No.285/3 but the same is only in 285/2 in patta land.

12. Per contra, it is the submission of the learned Government Advocate that the Tahsildar, Palladam Taluk, Tirupur District/Second Respondent herein issued a Notice through Village Administrative Officer of Sukkampalayam Village under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 stating that the Petitioner had encroached an extent of 250 square metre in S.F.No.285/3 and constructed a building in the Government land. Further, the Petitioner was requested to offer its explanation for its encroachment.

13. Moreover, the Petitioner had not produced the original documents and survey in S.F.Nos.285/2 and 285/3 has been done by the Taluk Surveyor and Village Administrative Officer. In fact, the encroachment made by the Petitioner is in Survey No.285/3 of Sukkampalayam Village which is to be removed and as such, the Petitioner is to be evicted.

14. Moreover, the vacant land available in S.F.No.285/3 of Sukkampalayam Village is proposed to be allotted to the Tamil Nadu Pollution Control Board for construction of their Office. Therefore, the Petitioner was served with notice under Section 7 of Tamil Nadu Land Encroachment Act, 1905. Apart from that, the constructed building and toilet is available in S.F.No.285/3 and not in S.F.No.285/2 of Sukkampalayam Village as stated by the Petitioner in the Writ Affidavit. Only for the encroachment made by the Petitioner, the Second Respondent had issued Notice, in question, on 28.11.2017. Therefore, the Writ Petition, filed by the Petitioner is liable to be dismissed.

15. Be it noted, that in the present case, the Petitioner was served with Notice under Section 7 of Tamil Nadu Land Encroachment Act, 1905 on 17.11.2017 (received by the Petitioner on 25.11.2017) and on 25.11.2017 the Petitioner had given a reply to the Tahsildar, Tiruppur District/Second Respondent herein in a detailed manner stating that the Commercial Complex is situated in the place and further, the Petitioner has taken a stand stating that they are not using the Government land without permission and in their own place, they have put up a commercial building. Further, the Petitioner had stated that since the original documents are in mortgage, they require twenty (20) days time to scrutinize the said documents. However without adverting to the reply of the Petitioner dated 25.11.2017, the Second Respondent has passed the impugned order on 28.11.2017 requiring the Petitioner to vacate from Survey No.285/3 of Sukkampalayam Village in enjoyment of 256 sq.mtr out of 1.30.5 acres terraced building and toilet.

16. In view of the fact that the final order of the Second Respondent dated 28.11.2017 is conspicuously silent on the reply of the Petitioner dated 25.11.2017, wherein, the Petitioner had denied the allegation of encroachment. Further, twenty (20) days time is sought for by the Petitioner to verify the documents, which were under mortgage. The impugned order has been issued without discussing the factual and other pleas made by the Petitioner in its reply. Therefore the same suffers from serious legal infirmities in the eye of law.

17. It is a well settled principle in Law that if an Administrative order or Executive order is to be passed by a Revenue Authority/Quasi-Judicial Authority, then the said Authority is to adhere to the principles of natural justice by providing adequate opportunity to the Petitioner to air its views strictly in accordance with law. However, in the instant case, the Second Respondent had passed the impugned order on 28.11.2017 (straight away) without discussing the pros and cons and not analysing the factual and other details raised by the Petitioner in its reply dated 25.11.2017. Therefore, this Court is of the considered view that the Second Respondent has violated the 'Principles of Natural Justice' and passed the impugned order dated 28.11.2017, which is liable to be interfered with by this Court. Accordingly, the impugned order passed by the Second Respondent on 28.11.2017 is hereby set aside and consequently the Writ Petition succeeds.

18. In fine, the Writ Petition is allowed leaving the parties to bear their own costs. The Tahsildar, Tiruppur District/Second Respondent herein is directed to look into the reply of the Petitioner dated 25.11.2017 de novo afresh and to provide an 'Opportunity of Hearing' to the Petitioner to submit necessary documents at its command and in this regard, the Petitioner is granted two weeks time from the date of receipt of copy of this order to produce necessary documentary evidence before the Second Respondent. Soon after the receipt of copies of relevant documents from the Petitioner, the Second Respondent shall look into the same with all seriousness and earnestness and pass final orders in the subject matter in issue by adverting both the factual and legal pleas raised by the Petitioner in its written reply and also to the pleas that may be raised, if any, at the time of personal hearing. The Petitioner is directed to avail the opportunity of submitting copies of necessary documents and to appear in person on a specified date and time, to be fixed by the Second Respondent in connection with de novo enquiry to be held by him and the Second Respondent shall pass final order within a period of four weeks thereafter, of course, in an unbiased, fair

and dispassionate manner, uninfluenced with any of the observations made by this Court in the present Writ Petition. Consequently, connected Miscellaneous Petitions are closed. In case, the Second Respondent/Tahsildar, Palladam, Tirupur District comes to the definite conclusion that the Petitioner is an 'Encroacher', then necessary steps may be taken to its logical end in removing the encroachment in question, of course, in the manner known to Law and in accordance with law.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sr

To

1. State of Tamil Nadu,
Represented by District Collector,
Tirupur District.
2. Tahsildar,
Palladam,
Tirupur District

+1cc to Ms.Selvi George, Advocate, S.R.No.82445
+1cc to the Government Pleader, S.R.No.82615

W.P.No.31377 of 2017

RR(CO)
CS/18/01/2019

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