

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

W.P.No.2621 of 2017
and
W.M.P.No.2581 of 2017

N.Nagalingam ... Petitioner

Vs.

1. The District Revenue Officer,
Chennai District.
2. The Tahsildar,
Mambalam Taluk,
Chennai-78.
3. The District Collector,
62, Rajaji Salai,
Chennai-600 001.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the first respondent in proceedings J1/45018/2004, dated 14.10.2015 and quash the same as illegal, incompetent and without jurisdiction and further direct the first respondent not to interfere with the petitioner's property T.S.No.1, Old Survey No.390 of Nesapakkam Village.

For petitioner : Mr.V.Raghavachari

For respondents: Mr.S.N.Parthasarathy, Govt. Advocate

ORDER

(The Order of the Court was made by M.Venugopal, J)

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the first respondent in proceedings

J1/45018/2004, dated 14.10.2015 and quash the same as illegal, incompetent and without jurisdiction and further direct the first respondent not to interfere with the petitioner's property T.S.No.1, Old Survey No.390 of Nesapakkam Village.

2. According to the petitioner, he is in occupation of the property in Old S.No.390 in T.S.No.1 of Nesapakkam Village. It originally belonged to R.Kandasamy, son of P.K.Rathina Mudaliar. He had purchased the property from Kamalammal on 25.10.1965 under Document No.3298 of 1965. He had executed a Power of Attorney in faovur of one Govindasamy Naicker on 22.10.1987, registered on the file of the SRO, Virugambakkam. In fact, the property held by him was comprised in Patta No.6 and the then Survey No.69/1 & 2, measuring 1.04 acres.

3. The stand of the petitioner is that the property was sub-divided and Survey No.69/1A, measuring 15 cents and Survey No.69/2B comprised of 67 cents, were within the enjoyment of the vendor of N.Gowri, wife of the petitioner. They have sold the property measuring 4970 Sq.Ft. on 06.07.2005. Patta was also granted in her name by the competent authorities. The certificate of the Town Survey Land Registrar included her name and the land was classified as Manai in Field Survey No.26/2. That apart, another Sale Deed was executed in July 2005 under Document No.3769/2005 and the extent of the property is 5040 Sq.Ft.

4. It is represented on behalf of the petitioner that the Southern side of the property, is the Patta property of Survey No.390 and on the Eastern side is a Road. Survey No.390 on the Southern side is classified as "Poramboke Land". The Land was under the occupation of the petitioner and was with his vendors. Only after taking into account the long enjoyment, the Tahsildar granted an Assignment Patta No.725/76. Moreover, the assignment was granted way back in February 1997. In short, it is the plea of the petitioner that together with Patta Land, the properties were enjoyed by the petitioner's wife and himself. The Assignment Patta was granted to the petitioner, Valliammal (the petitioner's mother) and Gowri (the petitioner's wife). Furthermore, the petitioner's wife has settled the property in the petitioner's name on 21.11.2007 under Document No.2766 on the file of the Sub-Registrar, Ashok Nagar. The extent of the property settled is 0.06 cents. In a similar manner, on 27.11.2007, another Deed of Settlement was executed by the petitioner's mother and wife in favour of the petitioner in respect of the property assigned to them. The crystalline stand of the petitioner is that ever-since that date, the petitioner in possession and occupation of the property in question.

5. The contention advanced on behalf of the petitioner is that he, all of a sudden, was issued with a notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, for which, he had issued a detailed reply on 19.05.2015. On 11.06.2015, the Tahsildar had passed an order treating the occupation as an

"Encroachment". The Assignment Deed which was relied upon by the petitioner, was rejected based on the reason that the village was added with Chennai District in the year 1979 itself and the Tahsildar (Assignment) of Saidapet Taluk, cannot issue any assignment order in the year 1997, i.e. after 18 years after transferring the village to Chennai District. Besides this, it was pointed out that only an extent of 3 cents would be assigned in the case of assignment. In copies of the assignment orders, the extent assigned works out to 5.5 cents to 6.75 cents. As such, the assignment orders submitted by the petitioner are stated by the respondents as bogus ones.

6. Learned counsel for the petitioner projected an argument that the Tahsildar, Mambalam was under an obligation to hold an enquiry, if he had any doubt with the documents. He cannot casually reject the document based on mere surmises. The issue of assigning the property to the third party also ought not to have arisen, as the access to the Poramboke Land was only through the petitioner's Patta Land. This is not the centre of controversy even before the Revenue Authorities.

7. Continuing further, it is the submission of the learned counsel for the petitioner that the petitioner preferred an Appeal before the third respondent/District Collector challenging the proceedings of the Tahsildar. In fact, the third respondent/District Collector had not conducted any enquiry, but the District Revenue Officer had issued a notice on 17.08.2015 and rejected the objection raised against the invocation of the provisions of the Tamil Nadu Land Encroachment Act, 1905.

8. It is brought to the notice of this Court on behalf of the petitioner that he issued notice on 07.11.2015 to the District Collector as well as the other Authorities, and in fact, the Tahsildar had referred to the Appeal Petition and claimed that the District Revenue Officer passed orders on 14.10.2015. Later, a conclusion was arrived at that as per the instructions of the District Revenue Officer, the Encroachment had been removed on 07.11.2015.

9. Yet another stand of the petitioner is that when he demanded the copies of A-Register for Survey Nos.64 to 68 in his Petition, dated 26.08.2016, a reply was received that the Register was not available. The procedure adopted by the District Revenue Officer, Chennai District, in directing the petitioner's removal from his own property while the dispute as regards the Encroachment is pending before the third respondent, is an untenable one.

10. Learned Counsel for the Petitioner strenuously contends that the petitioner is in occupation of his property and to upset his possession, action was initiated by the Authorities concerned. Hence, the petitioner has filed the present Writ Petition praying for passing an order of this Court in calling for the records on the file of the First Respondent in proceedings J1/45018/2004, dated 14.10.2015 and to quash the

same as illegal and without jurisdiction. Further, the petitioner has also prayed for issuance of a direction not to interfere with the petitioner's possession of the property in question.

11. Conversely, it is the submission of the learned Government Advocate appearing for the respondents that on the complaint of one Mr.M.Vijaya Kamaraj of Jafferkhanpet, Chennai-600 083, addressed to the Office of the Second Respondent, Mambalam Taluk, Chennai-600 078, dated 18.03.2015, it was mentioned that the Government Land in Valli Avenue, Bharathi Nagar Extension, Nesapakkam, Chennai-78, encroached by the petitioner, residing at No.8/7, Thiruvalluvar Salai 1st Street, Nesapakkam, Chennai-78, and prayed that the said Land be reverted to the Government's Jurisdiction.

12. The Learned Government Advocate appearing for the respondents further points out that based on the aforesaid complaint of the said Vijaya Kamaraj, a Field Inspection of the Land in question was carried out on 05.05.2015, which revealed that the property in question was as per the Permanent Land Records, part of Kodambakkam Village in Block No.119, Town Survey No.1, Old Survey No.390/Part and was classified as "Circar Poramboke" and utilised as "Odai" and a part of the land extending to 1105 Sq.M. (11,894 Sq.Ft.) was under the unauthorised occupation of the petitioner.

13. The Learned Government Advocate appearing for the respondents brings it to the notice of this Court that the Town Survey Land Records with respect to the encroached property, reads as under:

Town	Kodambakkam
Block No.	119
T.S.No.	1
Old S.No.	390 part
Classification	Circar Poramboke
Extent	Hec. Ares. Sq.Meters 01 12 23.0
Adangal	Odai
How the holding is utilised	Odai
Remarks	Odai

In fact, the Revenue Records show that the Land is classified as "Circar Poramboke" and the holding is utilised as "Odai". The very fact that the petitioner comes out with a plea that he is in possession of the said Land, unerringly points out that his

possession is an illegal one and he is an Encroacher of the Government Land which is utilised as a Water Body.

14. Apart from that, a preliminary enquiry conducted shows that the Land in issue is encroached upon, and therefore, a notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, in A1/03467/2015, was served on 05.05.2015 itself on the petitioner by the then Tahsildar, Mambalam, Chennai-600 078, in and by which the petitioner was required to show cause either before the District Collector, Chennai, or before the Tahsildar, Mambalam Taluk, Chennai-78, within 14 days of receipt of the said notice, as to why the petitioner should not be charged with penalty for unauthorised occupation under Section 5 of the said Act and/or be subjected to eviction from the Land and forfeiture of any construction and things deposited thereon under Section 6 of the said Act.

15. It appears that the petitioner furnished reply dated 19.05.2015 and stated that the said property has been assigned to him and prayed to dismiss the complaint projected by the complainant. In fact, the Second Respondent/Tahsildar, Mambalam Taluk, Chennai-78, vide proceedings in No.A1/03467/2015, dated 17.06.2015, dismissed the submissions of the petitioner and issued a notice under Section 6 of the said Act to the encroacher, namely the petitioner and the same was duly served on him on 19.06.2015.

16. It comes to be known that the petitioner has filed an appeal against the said notice, before the Third Respondent/District Collector, Chennai. The District Revenue Officer, Chennai, after conducting enquiry over the encroacher's (petitioner) appeal, dated 21.08.2015, had by the impugned proceedings, dated 14.10.2015, ascertained that the Land to an extent of 1,105 Sq.M. (11,894 Sq.Ft.) in Kodambakkam Village in Block No.119, Town Survey No.1, Old Survey No.390/part was indeed the Government Land classified as "Circar Poramboke" and was encroached upon by the petitioner and the said appeal was rejected, which was received by the petitioner on 06.11.2015. In reality, by virtue of the impugned order of rejection, the Second Respondent/Tahsildar was directed to maintain the Land in his control and had further instructed the Tahsildar, Mambalam Taluk, to remove at the earliest, the encroachment to an extent of 1,105 Sq.M. (11,894 Sq.Ft.) in Valli Avenue, Bharathi Nagar Extension, Nesapakkam, Chennai-78, in Block No.119, Town Survey No.1, Old Survey No.390/Part in Kodambakkam Village.

17. Learned Government Advocate appearing for the Respondents proceeds to state that in accordance with the District Revenue Officer's instructions, the encroachment by the petitioner in the property in question, was removed by officials in the presence of Police officials as well as the petitioner herein on 07.11.2015 and a cautionary notice in regard to the removal of encroachment, was conspicuously displayed on the land. Hence, the contra plea taken by the petitioner in this

regard is of no significance.

18. Learned Government Advocate appearing for the Respondents, while advancing his arguments, takes a plea that the cautionary notice over eviction of encroachment was displayed on the subject land and while fencing around the evicted land, it had been removed on 18.07.2016 by the petitioner and a complaint was lodged in regard to the same on 19.07.2016 and FIR in Crime No.985 was filed by R-10 MGR Nagar Police Station. According to the Respondents, the petitioner was remanded to Police custody on 29.09.2016 in Crime No.985 of 2016 on the file of R-10 MGR Nagar Police Station under Section 448 IPC and also under the provisions of the Tamil Nadu Property (Prevention of Loss and Damage) Act, over the removal of the cautionary notice over eviction of the encroachment displayed on the land as well as removal of the wire fencing around the property. Subsequently, the petitioner had been granted bail by the learned Principal Sessions Judge in Crl.M.P.No.17166 of 2016 in Crime No.985 of 2016, dated 18.10.2016 with necessary conditions imposed therein.

19. The vital stand taken by the Respondents is that the assignment order as claimed by the petitioner in respect of the land in Block No.119, Town Survey No.1, Old Survey No.390/Part in Kodambakkam Village, was issued in Assignment Patta in No.725 of 1976 in February 1997 by the Tahsildar (Assignment), Saidapet, Chennai-15, and he along with his wife had been in enjoyment of the land since then. According to the Respondents, it is questionable and dubious. In this connection, the Respondents have come out with a plea that the assignment of house-sites are provided to uplift the weaker strata of society, and provision of house-site to the house-less poor persons is the consistent policy of the Government and for landless people, free housing sites are assigned to the eligible persons who have a family annual income below Rs.16,000/- in rural areas and Rs.24,000/- in urban areas. In fact, 3 cents in villages, 1-1/2 cents in Municipal areas and 1 cent in Corporation areas, are assigned to the concerned persons as per Revenue Standing Order 21.

20. Learned Government Advocate takes a stand that the claim of the petitioner is that he is currently in occupation of the retrieved land, which is in violation of law, and in short, the petitioner being an encroacher, has proceeded to reclaim possession of the land wherefrom he was duly evicted on earlier occasion. Therefore, a fresh notice was painted over the gate in the land on 11.02.2017 and photographs taken before and after the same, are available with the authorities to confirm the same. Since the petitioner continues to occupy the Government land in question, which is an illegal possession, it is contended on behalf of the Respondents that the Writ Petition filed by the petitioner is per-se not maintainable.

21. On a careful consideration of the respective

contentions and also this Court taking note of the attendant facts and circumstances of the instant case in an encircling manner, is of the earnest opinion that the petitioner is not entitled to file the present Writ Petition and to seek the relief in respect of the First Respondent's proceedings in J1/45018/2004, dated 14.10.2015, because of the simple reason that the respective sides have taken a divergent stand and also the issues projected by the respective parties centre around the aspect of letting in oral and documentary evidence, especially when the genuinity, validity, truth or otherwise of the assignment document, is assailed by the respondents. As such, this Court, without expressing any opinion on the merits of the matter and also not delving deep into the same, simpliciter directs the petitioner to approach the competent civil forum for redressal of his grievance, of course, in the manner known to law and in accordance with law.

22. Moreover, when the relief of Mandamus is claimed, then there must be a legal enforceable duty enjoined upon the concerned Respondents and obligation is to be performed also on the concerned party. In a Writ Petition, disputed questions of facts or where the facts project on either side, revolves around the complicated aspects, indeed are to be thrashed out in a threadbare fashion only before the civil forum by means of affected party filing necessary civil proceedings. Viewed in that perspective, this Court, while disposing of the present Writ Petition, grants liberty to the writ petitioner to approach the competent civil forum, of course, in the manner known to law and in accordance with law, and to seek redressal of his grievance, if he so desires/advised. The petitioner as plaintiff in the civil suit to be instituted before the competent civil forum, is given an option to file necessary documentary evidence as well as adduce oral evidence by examining the witnesses including himself and others, if any. No costs. Consequently, W.M.P. is closed.

Sd/-

सत्यमेव जयते
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

cs

To

1. The District Revenue Officer,
Chennai District.

2. The Tahsildar,
Mambalam Taluk,
Chennai-78.

3. The District Collector,
62, Rajaji Salai,
Chennai-600 001.

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.77290

+1cc to the Government Pleader, S.R.No.77674

W.P.No.2621 of 2017

RGN(CO)
GSP(06/12/2018)



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