

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:20.11.2018

Coram

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

W.P.No.30081 of 2018
and
W.M.P.Nos.35095 and 35100 of 2018

T.P.Thangavel

.. Petitioner

Vs.

1.The District Collector,
Dharmapuri District,
Collectorate, Dharmapuri - 636 705.

2.The Revenue Divisional Officer,
Salem Bypass, Periyar Nagar,
Harur, Dharmapuri District - 636 903.

3.The Tahsildar,
Pappireddipatti Taluk,
Dharmapuri District - 636 905.

..Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records relating to the notices dated 08.12.2017 and 09.01.2018 issued by the 3rd respondent to the petitioner under Section 7 and 6 of the Tamil Nadu Land Encroachment Act, 1905 in connection with the land measuring extents of 0.77.5 hectares and 0.44.0 hectares in S.No.40/2 and 40/3A in Devarajapalayam Village, Pappireddipatti Taluk, Dharmapuri District and quash the same as barred by limitation and violative of the fundamental rights of the petitioner under Articles 14 and 21 of the Constitution of India and consequently direct the 3rd Respondent to issue patta for the said land in the name of the Petitioner.

For Petitioner : Mrs.Nalini Chidambaram
Senior Counsel
For Mrs.C.Uma

For Respondents : Mr.J.Pothiraj
Special Government Pleader

O R D E R

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

Heard both sides.

2.No counter is filed on behalf of the Respondents.

3.According to the Petitioner, he purchased the land measuring an extent of 0.77.5 hectares in S.No.40/2 and 0.44.0 hectares in S.No.40/3A in Devarajapalayam Village, Phairnatham Post, Pappireddipatti Taluk, Dharmapuri District in the year 1976, by virtue of the registered sale deed as Document No.435/1976.

4.The stand of the Petitioner is that at the time of purchase, he had not known that the vendor of the land is an Adi Dravidar assignee of land. He had invested considerable amounts and constructed a house with SC 594 and 325 developed the said land by digging up a well and got electricity connection and planted 70 coconut trees, 13 drumstick, 22 teak, 7 vembu, 2 tamarind trees and 9 Betel nut trees. Furthermore, by virtue of proceedings dated 04.08.2012 of the 2nd Respondent, it was mentioned that the land in S.No.40/3A in Devarajapalayam Village, Dharmapuri District was assigned to a person belonging to Adi Dravidar Community (Scheduled Caste) and the patta was issued to the assignee subject to conditions. However, the Petitioner who is a non SC is in enjoyment of the said land and the conduct of the Petitioner amounts to unauthorised occupation of the land belonging to Adi Dravidar and by the unauthorised occupation of the land assigned to Adi Dravidar, the Petitioner has violated the assignment condition and also it amounts to violation of conditions imposed by the Government. Therefore, it was proposed to resume the said land to the Government from the Petitioner, since the occupant has acted contrary to the assignment condition and as per the Revenue Order 15(41), the assignment should be cancelled and possession of the said land should be resumed and the land should be converted into poramboke land and recorded in the village account as Government land Further, the Petitioner was required to give his objections to the said proposal within 15 days from the date of receipt of the notice, failing which, the patta granted in favour of the assignee would be cancelled and included in the Government account. Since the Petitioner is an illiterate person, he had not submitted his reply/objections because of the reason he had not known the implication of the notice.

5.It comes to be known that the Petitioner was required to appear on 05.01.2013 and furnish his explanation/objection to

the said proposal of cancelling the assignment with relevant documents. Subsequently, the Petitioner received a notice dated 08.12.2017 as per Section 7 of the Tamil Nadu Land Encroachment Act, 1905 from the 3rd Respondent. In the said notice, it was mentioned that the Petitioner is enjoying the Government land in S.No.40/2, 40/3A measuring an extent of 0.77.5 and 0.44.0 in Devarajapalayam Village, Pappireddipatti Taluk unauthorisedly. Moreover, the notice also stated that why action should not be taken under Section 3 of the Act, 1905 for levy of assessment and payment of penalty as per the Act, 1905 or why the occupant should not be evicted and the crop on the land should not be forfeited or the building removed under Section 6 of the Act and the Petitioner was required to send his objections.

6.The categorical plea of the Petitioner in the Writ Petition is that he had addressed a communication/letter dated 19.12.2017 to the 3rd Respondent/Tahsildar, Pappireddipatti Taluk, Dharmapuri District replied to the Section 7 notice stating that he has been in enjoyment of the land in S.No.40/2 and S.No.40/3A in Devarajapalayam Village for the past 42 years and further, he sought for patta in his name for the said land. However, the Authority had not passed any orders in regard to the reply furnished by the Petitioner for Section 7 notice. However, a notice dated 09.01.2018 as per Section 6 of the Act issued by the 3rd Respondent requiring the Petitioner to vacate the land within 7 days from the date of receipt of the notice and directed the Bommidi Firka Revenue Inspector to protect all the objects in the disputed land until receipt of the 1st Respondent/District Collector's order.

7.In view of the fact that the Petitioner had not submitted a reply to the notice dated 08.12.2017 issued by the 3rd Respondent and also this Court keeping in mind yet another fact that no order was passed in regard to the request for 30 days time to submit a reply by the Petitioner was granted by the authority concerned and also, a notice dated 09.01.2018 under Section 6 of the Act, 1905 was issued by the 3rd Respondent to the Petitioner requiring him to vacate the land within 7 days from the date of receipt of the notice etc., this Court, based on Equity, Fair Play, Good Conscience and even as a matter of prudence, directs the Petitioner to submit his detailed reply to the notice dated 08.12.2017 addressed to the 3rd Respondent setting out all factual and legal pleas to be raised therein within a period of two weeks from the date of receipt of copy of this order. Soon after receipt of reply by the 3rd Respondent from the Petitioner within the time adumbrated by this Court, the 3rd Respondent/Tahsildar, Pappireddipatti Taluk, Dharmapuri District is directed to look into the contents of the representation/reply of the Petitioner with all seriousness and earnestness and to dispose of the said representation/reply

within a period of four weeks thereafter, of course, after providing necessary opportunity to the Petitioner by adhering to the Principles of Natural Justice. In case, the Petitioner requires any oral/personal hearing that also may be granted by the 3rd Respondent. If the Petitioner is desirous of submitting any documentary evidence at his command by producing necessary documents, the same shall be produced by him before the 3rd Respondent, who shall take into consideration of the same and also advert to both the factual and legal pleas raised by the Petitioner in the representation/reply to be submitted by him and to pass a final reasoned speaking order in a qualitative and quantitative terms and that too in an unbiased free, fair, just and in a dispassionate manner, of course, untrammelled and uninfluenced with any of the observations made by this Court in this Writ Petition. Till the final orders are passed by the 3rd Respondent, the Petitioner shall not be disturbed/displaced from the subject property by any one.

8. With the aforesaid observations and directions, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-

Assistant Registrar (CS VII)

//True Copy//

Sub Assistant Registrar

Sgl

To

1. The District Collector,
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Collectorate, Dharmapuri - 636 705.
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Harur, Dharmapuri District - 636 903.
 3. The Tahsildar,
Pappireddipatti Taluk,
Dharmapuri District - 636 905.
- +1 cc to The Government Pleader, Sr.No.79539
+1 cc to M/s.C.Uma, Advocate, Sr.No.79020

W.P.No.30081 of 2018

RJI (CO)
CSL/12.12.2018