IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:09.11.2018

Coram

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

W.P.No.29212 of 2018
and
W.M.P.No.34138 of 2018

V.Periasamy .. Petitioner

Vs.

1.The Tahsildar,
Edappady Taluk,
Salem District.

2.The Revenue Inspector,
Edappady, Salem District. ..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari calling for the records pertaining to the impugned notice dated 22.10.2018 issued by the 2nd Respondent to the Petitioner and quash the same.

For Petitioner : Mr.R.Neelakandan

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.The Petitioner is residing with his family in the property comprised in Survey No.24 and its part, by putting up a residential house with asbestos sheet measuring an extent of around 900 sq.ft. As a matter of fact, there are three coconut

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

trees and one tamarind tree on the land, which is under his occupation. For his livelihood, he earns an income by nurturing the cattle. Electricity connection is provided to his house and and he is paying the house tax, for which due receipts were issued by the Competent Authority.

4.The grievance of the Petitioner is that the 2nd Respondent/ Revenue Inspector, Edapaddy, Selam District had issued a notice dated 22.10.2018 [under Section 7 of the Tamil Nadu Land Encroachment Act, 1905] requiring him to vacate from the subject property wherein he had put up a Cement Sheet house to an extent of 0.02.0, out of a total extent of 21.79.5 hectare, Sub Division No.24 in Dhadhapuram Village and the details of the land is mentioned in the notice as 'Amman Lake'.

5.The Learned Counsel for the Petitioner takes a legal plea that the impugned notice dated 22.10.2018 issued under Section 7 of the Tamil Nadu Land Encroachments Act, 1905 is an improper one because of the reason that it cannot be invoked by the 2nd Respondent for the simple reason that the subject property is a Water Tank/Water Body, as made mention of in the impugned notice.

6.The other plea taken on behalf of the Petitioner is that he had not encroached upon any Water Body as alleged by the 2nd Respondent and in fact, there is no water flowing on his land to show that there is a Water Body. In any event, it is projected on the side of the Petitioner that the Petitioner's occupation is not a hurdle to any water courses and he is in enjoyment of the property for many number of years.

7.Advancing his arguments, the Learned Counsel for the Petitioner comes out with a stand that the authorities concerned relating to the allocation of lands for construction of houses under 'Prime Minister House Loan Scheme (Pradhan Mantri Awas Yojana)' had visited the Petitioner's place and other adjacent houses and informed that the Government would give the benefit of the said scheme to the Petitioner and similarly placed persons, but the same would take a longer time. As such, any endeavour being made on the part of the authorities to evict the Petitioner is an unfair, unjust and improper one.

WEB COPY

8.Lastly, it is the contention of the Learned Counsel for the Petitioner that if the impugned notice dated 22.10.2018 is given effect to, then, the Petitioner's entire family will be put to irreparable loss, untold mental agony and hardship.

9.Per contra, it is the submission of the Learned Special Government Pleader for the Respondents that the Petitioner is an 'Encroacher' and the impugned notice dated 22.10.2018 was issued

https://hcservices.ecourts.gov.in/hcservices/

to and in favour of the Petitioner only in that capacity as an 'Encroacher' and it is always open to the Petitioner to submit his explanation/reply/representation before the 2nd Respondent and in the event of Petitioner submitting the representation/reply to the impugned notice dated 22.10.2018, certainly, the 2nd Respondent will look into the contents of the representation of the Petitioner and will take such action as he deems fit and proper, based on the facts and circumstances of the case which float on the surface.

10.At this juncture, a mere running of the eye over the contents of the impugned notice dated 22.10.2018 issued by the 2nd Respondent (under Section 7 of the Tamil Nadu Land Encroachment Act, 1905) latently and patently indicates that the Petitioner was required to vacate from the place, which is in his occupation, as mentioned in detail in the said notice and he was required to vacate from the place on or before 07.11.2018. He was also informed that he can remove the crops harvested by him; remove the buildings and constructions made in the subject property in question. To put it precisely, he was given an opportunity to submit his representation for the impugned notice dated 22.10.2018. However, the Petitioner had not availed of the said opportunity to submit his representation explaining his stance before the 2nd Respondent and filed the instant Writ Petition.

11.Therefore, at this stage, this Court, without expressing any opinion on the merits of the matter and also not delving deep into the same, simpliciter, based on Equity, Fair Play, Good Conscience and even as a matter of prudence, directs the Petitioner to submit his detailed representation for the impugned notice dated 22.10.2018 before the 2nd Respondent within ten days from the date of receipt of copy of this order. Soon after receipt of the representation made by the Petitioner, the 2nd Respondent shall look into the same and after providing adequate opportunity to the Petitioner by adhering to the Principles of Natural Justice, the 2nd Respondent shall take a final decision in the subject matter in issue within a period of four weeks thereafter. If the Petitioner is desirous of submitting any documentary evidence to support his case, the same may be produced before the 2nd Respondent, who shall receive the same from the Petitioner, take into consideration of the same and to advert upon both the factual and legal pleas if any raised by the Petitioner in a representation or at the time of final hearing and to pass necessary orders in a fair, free, just and in a dispassionate manner, especially uninfluenced and untrammelled with any of the observations made by this Court in this Writ Petition. Till final orders are passed, the Petitioner shall not be displaced/disturbed from the subject property.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Before parting with the case, this Court makes it crystalline clear that if the 2nd Respondent/Competent Authority comes to a definite that the Petitioner is an 'Encroacher' and encroached upon the 'Amman Lake', then, the Authority is at liberty to take such lawful action and to carry out the said action to its logical end, of course, in the manner known to Law and in accordance with Law.

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

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

Sgl
To

1.The Tahsildar,
Edappady Taluk,
Salem District.

2.The Revenue Inspector,
Edappady, Salem District.

3.The Government Advocate,
High Court, Madras.

+1cc to Mr.R.Neelakandan, Advocate Sr.76841

WEB COPY

kk[co]
srg 28/11/2018

https://hcservices.ecourts.gov.in/hcservices/