

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.11.2018

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE Mrs. JUSTICE R.HEMALATHA

W.P.No.29681 of 2018 and
W.M.P.Nos.34646 and 34650 of 2018

M.Govindasamy ... 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 Constitution of India for issuance of a Writ of Certiorari Mandamus to call for the records relating to the Notices dated 26.12.2017 and 09.01.2018 issued by the 3rd Respondent to the Petitioner under Sections 7 and 6 of the Tamilnadu Land Encroachment Act, 1905 in connection with the land measuring an extent of 0.96.0 hectares in S.No.126/1 in Pilparuthi 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
Ms.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. No counter is filed on behalf of the Respondents 1 to 3.

2. According to the Petitioner, he had purchased a land measuring an extent of 0.96.0 hectares [2.36 acre] in Survey No.126/1 in Pilparuthi Village, Pappireddipatti Taluk, Dharmapuri District in the year 1958 by means of a Sale Deed dated 04.03.1958. At the time of purchase, the Petitioner had not known that the vendor of the Land is an 'Adidravidar Assignee' of Land subject to conditions. The Petitioner, after his purchase, had invested considerable sum and constructed a House having Service Connection No.516, developed the said land by digging up a well and planted 20 Coconut Trees, 5 Tamarind Trees etc.,

3. The stand of the Petitioner is that he received a Notice dated 26.12.2017, as per Section 7 of the Tamilnadu Land Encroachment Act, 1905 from the 3rd Respondent / Tahsildar, Pappireddipatti, Dharmapuri District. In the said notice, it was mentioned that the Petitioner is in enjoyment of the land in Survey No.126/1, measuring 0.96.0 Hectares in Pilparuthi Village, Pappireddipatti unauthorisedly and further, he was required to show cause why action should not be taken under Section 3 for Levy of Assessment and payment penalty, as per Section 5 of the said Act or why he should not be evicted the crop on the land should not be forfeited or the Building removed in terms of Section 6 of Act. In short, the Petitioner was required to furnish his objections.

4. It comes to be known that the Petitioner on 08.01.2018 submitted his reply to Section 7 Notice stating that he has been in enjoyment of the land in S.No.126/1 measuring 0.96.0 in Pilparuthi Village, Pappireddipatti for the past 60 years and sought 30 days time to submit his reply with relevant documents.

5. The grievance of the Petitioner is that no order was passed based on the request of the Petitioner for 30 days to submit a reply by the Petitioner to Section 7 Notice issued by the concerned Authority. However, notice dated 09.01.2018 was issued by the 3rd Respondent, as per Section 6 of the Act, 1905 requiring him to vacate from the subject land within 7 days from the date of receipt of notice etc., Since the Petitioner is aggrieved by the proceedings initiated against him in terms of the Tamilnadu Land Encroachment Act, 1905 by the concerned Authority, he has filed the present Writ Petition.

6. It transpires that the Petitioner had submitted his reply to the notice dated 26.12.2017 issued by the 3rd Respondent. A perusal of the contents of the reply of the Petitioner dated 08.01.2018 among other things indicates that his parents had obtained possession of the land 60 years before and they were in enjoyment of the property in question etc., without taking into consideration of the contents of the explanation / representation of the Petitioner dated 08.01.2018, the Tahsildar, Pappireddipatti had issued a notice to and in favour of the Petitioner under Section 6 of the Act, 1905. In the said notice, the Petitioner has mentioned that he is in enjoyment of Survey No.126/1 an extent of 0.96.0 cents and carrying on agricultural operations.

7. In view of the fact that the 3rd Respondent had issued the notice dated 09.01.2018 under Section 6 of the Act without considering the objections of the Petitioner in his reply dated 08.01.2018 and passing necessary orders thereto, this Court is of the considered view that the rudimentary 'Principles of Natural Justice' have not been adhered to by the 3rd Respondent.

8. Notwithstanding the fact that the 3rd Respondent had issued the Section 6 Notice dated 09.01.2018 straight away without taking into account of the objections of the Petitioner dated 08.01.2018 and passing order to that effect, the Tamilnadu Land Encroachment Act, provides for filing of an 'Appeal' against the Section 6 of Notice dated 09.01.2018 issued by the 3rd Respondent. As such, this Court grants permission to the Petitioner to prefer an Appeal against Section 6 Notice dated 09.01.2018 issued by the 3rd Respondent. The said Appeal is to be preferred by the Petitioner within a period of two weeks from the date of receipt of copy of this order. After the receipt of an Appeal preferred by the Petitioner, within the time adumbrated by this Court, the 3rd Respondent shall look into the same, take into account of the objections / contentions raised by the Petitioner in Appeal and thereafter, is directed to pass a final order in the subject matter in issue, ofcourse, after providing necessary opportunity to the Petitioner and others concerned within a period of four weeks.

9. It cannot be gainsaid that the 3rd Respondent shall pass a reasoned speaking order on qualitative and quantitative terms in a free, fair, just and in a dispassionate manner and that too untrammelled and uninfluenced with any of the observations made by this Court in this Writ Petition. The Petitioner is directed to lend his unstinted co-operation and assistance to the 3rd Respondent in regard to the passing of the final orders within the time specified by this Court.

10. Before parting with the case, this Court makes it quite clear that it is open to the Petitioner to produce necessary documents before the 3rd Respondent and the 3rd Respondent after receipt of the said documents can take into account of the same and pass final orders in the subject matter in issue. Furthermore, if the Petitioner requires any personal or oral hearing that may also be granted by the 3rd Respondent as he deems fit and proper, ofcourse, based on the facts and circumstances, which float on the surface. Till Final Orders are passed in an 'Appeal', Possession and Enjoyment of the Petitioner in the subject property shall not be displaced / disturbed in any manner.

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

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

ssd

To

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

+1cc to Mrs.C.Uma, Advocate sr.no.78368

+1cc to Government Pleader sr.no.79181

W.P.No.29681 of 2018 and
W.M.P.Nos.34646 and 34650 of 2018

nr 05/12/2018