



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 21.02.2018

DELIVERED ON : 08.03.2018

WEB COPY

CORAM:

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE Mrs.JUSTICE R.THARANI

W.P.(MD).No.1717 of 2018

and

W.M.P.(MD)Nos.1826, 1827 and 3685 of 2018

M.Karuppasamy

... Petitioner

Vs.

1.The District Collector,
Madurai District,
Madurai.

2.The Tahsildar,
Peraiyur Taluk,
Madurai District.

3.Gurusamy

... Respondents

PRAYER:This appeal is filed under Section 226 of the Constitution of India, prayed for issuance of a Writ of Certiorari, to call for the records pertaining to the impugned order in Na.Ka.No.3281/2017/A4 dated 18.01.2018 on the file of the respondent no.2 and quash the same as illegal.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents 1 and 2

: Mr.D.Muruganandam

Additional Government Pleader

ORDER

(Order of the Court was made by T.S.SIVAGNANAM, J)

Heard Mr.T.Lajapathi Roy learned counsel appearing for the appellant and Mr.D.Muruganantham, learned Additional Government Pleader appearing for the respondents 1 and 2.

2.This writ petition has been filed praying for issuance of a Writ of Certiorari, to quash the impugned notice issued by the second respondent dated 18.01.2018. The petitioner claims himself to be the village head of Santhaiyur Village, Peraiyur Taluk, Madurai District and according to the petitioner, in his village,



people comprising from various castes are living in an area called Indira colony. In the said area, there are 70 Arundanthiayars and 30 Paraiyars and both belongs to schedule caste community. There is a temple called Arulmigu Rajakaliamman Temple which is stated to be in existence for over 100 years and it is the place of worship for the Paraiyars community people. During 2014, a barbed wire fence was erected so as to maintain the temple and the adjoining areas in a hygienic manner. Subsequently, an agreement was arrived at between Arundathiyar and Paraiyar community people and a compound wall was also constructed around the temple. The petitioner's claim is that they have left 11 ft road for the Arundathiyars and constructed the compound wall.

3.It is further submitted that the third respondent has proposed to construct a compound wall around the Kaliyamman temple and if it is permitted it will completely obstruct the public pathway and this was objected by the residents. However, the third respondent started propagating as if the petitioner and their community people have constructed compound wall to discriminate them on caste basis and therefore, filed writ petition in W.P(MD). No.13332 of 2017 to forbear the second respondent to demolish the compound wall around Rajakaliyamman temple. In the said writ petition, the second respondent filed a counter affidavit stating that the proceedings under the Land Encroachment Act have been initiated. The third respondent filed a writ petition in W.P(MD). No.15363 of 2017, praying for a direction to remove the compound wall in S.F.No.194. It is stated that the petitioner in this writ petition was not a party in the other writ petition filed by the third respondent and in the said writ petition, the respondent took a stand that already an order under Section 6 of the Tamilnadu Land Encroachment Act has been passed and the enforcement of such order is being opposed by the Paraiyar community people. It is submitted that the second respondent did not issue any notice under Section 7 of the Act and straight away has passed the impugned order dated 18.01.2018, stating that the notice under Section 7 of the Act was issued under the name of "Paraiyar Uravinmurai Thalaivar".

4.The learned counsel for the petitioner submitted that the impugned action taken by the second respondent is against the principles of natural justice and notice issued under Section 7 of the Act should be in conformity with Section 25 of the Tamil Nadu Revenue Recovery Act which mandates that the copy of notice should be issued to the defaulter and for non compliance of the said provision, the impugned notice is liable to be set aside.

5.The learned Additional Government Pleader on instruction, submitted that action has been initiated after following proper procedure and there is no error in the decision making process. The learned Additional Government Pleader produced a sketch to show the de-marcation of the vacant place and location of the temple where the common wall is situated.

6.The learned counsel appearing for the third respondent submitted that proper procedure has been followed after the writ petition filed by the third respondent in W.P.(MD)No.15363 of 2017 was disposed of by the Division Bench, by an order dated 21.08.2017. The Division Bench, while directing the second respondent herein to act on the third respondent's representation observed that unless there is an order of stay passed on the order passed under Section 6 of the Act, the authority cannot refuse to act. The impugned proceedings records what was agreed upon and therefore, it is submitted that there is no error in the order.

7.After hearing the learned counsels for the parties and on a careful perusal of the materials on record, it is seen that as per the classification of the revenue records, the land is shown as 'பறையன் குடியிருப்பு, சதுரக்கிணறு, வட்டக்கிணறு'. Admittedly, the land is a Government Poramboke land. What has been mentioned in the column 12 of the A-register is the position which is existing on ground. Thus, the character of land has never changed, though it is stated that there is an endorsement in the revenue records showing that the land as 'Natham-Kaali'. In any event, the petitioner claiming himself to be representative of a section of the public residing in the area, cannot seek to establish any vested right over the property. The sketch shows that vast extent of Government land is sought to be cordoned off which if left as such can be used for public purpose.

8.The Additional Government Pleader submitted that more than 6 cents of land is lying vacant. There is a proposal to use the same for public purpose by constructing Anganvadi, etc. Therefore, neither the petitioner and his community people nor the third respondent and their community people can claim any vested right over the Government land especially when they are not residing in the said land, but are entitled to use the places of worships/temples located therein. Thus, if the second respondent is not permitted to proceed further pursuant to the impugned notice, it would result in an anomalous situation discriminating the rights of the parties. Though both sections may belong to schedule caste communities, what is to be seen is overall public interest.

9.Thus, for the above reasons, we are not inclined to entertain the challenge to the impugned notice on the ground raised by the petitioner. In the result, the writ petition fails and dismissed and the second respondent is directed to proceed further in accordance with law. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Crl.Side)

/True Copy/

Sub Assistant Registrar



To

1.The District Collector,
Madurai District,
Madurai.

2.The Tahsildar,
Peraiyur Taluk,
Madurai District.

+1CC to Mr.T.Lajapathi Roy, Advocate, SR.No. 54136

+2CC to Mr.A.Rajini, Advocate, SR.No. 54059

+1CC to the Special Government Pleader SR.No.54333

W.P. (MD) .No.1717 of 2018
08.03.2018

mrn/rmk

AM/SKN RSK/SAR 4/15.03.2018/4P/7C