



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.02.2018

CORAM:

**THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA**

**W.P(MD)No.2431 of 2018
and
W.M.P(MD)No.2623 of 2018**

1.Muniammal
2.Sakthivel
3.Sathaiah

... Petitioners

Vs.

1. The District Collector,
Ramanathapuram District,
Ramanathapuram.
2. The Revenue Divisional Officer,
Ramanathapuram,
Ramanathapuram District.
3. The Tahsildar,
Thiruvadanai Taluk,
Ramanathapuram District.
4. The Revenue Inspector,
Cholandur,
Thiruvadanai Taluk,
Ramanathapuram District.
5. The Village Administrator Officer,
Cholandur Village,
Thiruvadanai Taluk,
Ramanathapuram District.

6.Jamal Mohammed

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, to call for the records of the impugned order passed by the third respondent in his proceedings Nil, dated 13.12.2012 and quash the same as illegal.



For Petitioners : Mr.K.Kulanthai Vikram
For RR 1 to 5 : Mr.VR.Shanmuganathan,
Special Government Pleader.

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ORDER

(Order of the Court was made by **M. SATHYANARAYANAN, J.**)

By consent, the Writ Petition itself is taken up for final disposal.

2.Mr.VR.Shanmuganathan, learned Special Government Pleader, accepts notice on behalf of the respondents 1 to 5.

3.The petitioners claim that they are the residents of Survey No.189/1 ad-measuring to an extent of 0.02.0 ares along with superstructure over 50 years and it is also subjected to all statutory remedies. The sixth respondent, who is inimical to the petitioner, has filed W.P(MD)No.10153 of 2017 against the official respondents as well as the petitioners praying for issuance of a Writ of Mandamus, directing the respondents 1 to 4 therein to remove the encroachment made by the respondents 5 to 7 therein, made in Government poromboke land in Survey No.189/1, Cholandur Village, Thiruvadanai Taluk, which is classified as 'Odai and cart-track' and it was disposed of on 20.07.2017 by directing the respondents 3 and 4 therein to take follow-up action, pursuant to the notice, dated 19.01.2015 and conclude the process, after issuing notice to the respondents 5 to 7 therein, after giving reasonable opportunity to state their case.

4.The learned counsel appearing for the petitioners would submit that the sixth respondent has deliberately suppressed certain material facts for the reason that on an earlier occasion, he filed a suit in O.S.No.8 of 2001, on the file of the Court of the District Munsif, Thiruvadanai and it was dismissed on 03.12.2009 and challenging the same, the sixth respondent filed an appeal in A.S.No.24 of 2004, on the file of the Court of the Principal District Judge, Ramanathapuram and it was also dismissed on 02.04.2004 and suppressing the same, he has filed the said Writ Petition and would further state that no reasonable opportunity has been given to the petitioners to putforth their stand and hence prays for interference.

5.Per contra, Mr.VR.Shanmuganathan, learned Special Government Pleader appearing for the official respondents would submit that the petitioners are having an effective alternate appeal remedy under Sections 10 and 10(B) of the Tamil Nadu Land Encroachment Act, 1908 and as such, the Writ Petition is not maintainable.



6.This Court has considered the rival submissions made on either side and perused the materials placed on record.

7.It is relevant to extract Sections 10 and 10(B) of the Tamil Nadu Land Encroachment Act, 1905:-

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"10.Appeal.- An appeal shall lie (a) to the Collector from any decision or order passed by a Tahsildar or Deputy Tahsildar under this Act, and to such officer as may be specified by the State Government in this behalf (hereinafter referred to as the appellate authority) from any decision or order passed by an authorised officer under this Act and different appellate authorities may be specified for different classes of cases; and

(b) to the District Collector from any decision or order of a Collector passed otherwise than on appeal, and

(c) to the [Commissioner of Land Administration] from any decision or order of a District Collector passed otherwise than on appeal.

10-B.Stay pending decision in appeal or revision.- Pending the disposal of any appeal or application or proceedings for revision under this Act, the Collector, the District Collector, the Appellate Authority the [Commissioner of Land Administration] or the State Government, as the case may be, may by order, and subject to such conditions as may be specified therein, stay the execution of the decision or order appealed against or sought to be revised."

8.As rightly pointed out by the learned Special Government Pleader appearing for the official respondents, since the petitioners are having an effective alternate appeal remedy, this Court is of the view that the Writ Petition itself is not maintainable. However, the petitioners are at liberty to file an appeal before the first respondent/Appellate Authority, challenging the legality of the notice issued under Section 6 of the Tamil Nadu Land Encroachment Act, 1905, by enclosing relevant and authenticated documents along with the petition for stay under Section 10(B) of the Tamil Nadu Land Encroachment Act, 1905 within a period of four weeks from the date of receipt of a copy of this order and upon receipt of the same, either the first respondent or the delegated official, shall entertain the appeal, if the papers are otherwise in order and take up the petition for stay and give a disposal in accordance with law within a period of two weeks thereafter and the said official is at liberty to take up the main appeal and give a disposal on merits within a period of eight weeks from the date of disposal of the stay application and till the disposal of the petition for stay, the third respondent shall defer his motion in terms of the notice issued under Section 6 of the Tamil Nadu Land Encroachment Act, 1905.



9. The Writ Petition stands disposed of accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (W)

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/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
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5. The Village Administrator Officer,
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Thiruvadanai Taluk,
Ramanathapuram District.

+ 1 cc TO Mr.K.Kulanthai Vikram , Advocate in SR No. 46717

ps/vsg

AE/SKN RSK/SAR1/01.03.2018/4P/7C

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