



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

AND

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P(MD)No.15077 of 2018

and

W.M.P(MD)No.13653 of 2018

Malaiselvam

... Petitioner

Vs.

1.The District Collector,
Ramanathapuram District,
Ramanathapuram.

2.The District Revenue Officer,
Ramanathapuram,
Ramanathapuram District.

3.The Revenue Divisional Officer,
Ramanathapuram,
Ramanathapuram District.

4.The Tahsildar,
Thiruvadanai,
Ramanathapuram District.

5.The Executive Officer,
Thondi Town Panchayat,
Thondi,
Ramanathapuram District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for a writ of Mandamus to forbear the respondents from in any manner dispossessing or evicting the house property premises bearing Survey No.49 of an extent of 2-1/2 cents Door No.3/8, North Kadarkarai Kudiyeruppu, Pudukudi, Thondi, Ramanathapuram District till the issuance of patta in pursuance of the enquiry notice issued by the first respondent, dated 06.04.2018 in Na.Ka.No.2/897/2018 based on the common order passed by this Court in W.P(MD)No.4911 of 2018, dated 07.03.2018.

For Petitioner

: Mr.S.Sundarapandian

For Respondents

: Mr.A.K.Baskarapandian
Special Government Pleader



ORDER

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

The petitioner has filed the above writ petition seeking a writ of Mandamus to forbear the respondents from in any manner dispossessing or evicting the house property premises bearing Survey No.49, admeasuring an extent of 2-1/2 cents, Door No.3/8, North Kadarkarai Kudiyeruppu, Pudukudi, Thondi, Ramanathapuram District till the issuance of patta in pursuance of the enquiry notice issued by the first respondent, dated 06.04.2018 in Na.Ka.No.2/897/2018 based on the common order passed by this Court in W.P(MD)No.4911 of 2018, dated 07.03.2018.

2. It is pertinent to note that though the third respondent had passed the orders under Section 6 of the Tamil Nadu Land Encroachment Act, 1905, the petitioner has not challenged the same. The present writ petition has been filed only for issuance of a writ of Mandamus.

3. The learned counsel for the petitioner submitted that the petitioner is in possession and occupation of the property in Survey No.49 admeasuring 2-1/2 cents for more than 30 years and therefore, he should be allowed to continue in possession of the said property.

4. The learned counsel also submitted that the benefits granted to the occupants of the Government lands under G.O(Ms.)No.854, Revenue Department, dated 30.12.2006, should be given to the petitioner also.

5. It is brought to the notice of this Court that one K.Rajendran has filed a Public Interest Litigation in W.P(MD)No.23226 of 2017 and this Court, by order dated 08.01.2018, disposed of the said writ petition, observing as follows:

"9. Though the petitioner prays for a larger relief, this court, in the light of the aforesaid facts and circumstances of the case and without going into the merits of the claim projected by the petitioner either in this Writ Petition or in his representations, directs the third respondent to act on the communication of the fourth respondent dated 11.12.2017 in Na.Ka.No.105/2017 and with the help of the jurisdictional Surveyor to cause inspection of Survey Nos.49, 50, 50/4, 51 at Muni Iyaa Kovil Street, Pudukudi, Thondi, Ramanathapuram District, within a period of eight weeks from the date of receipt of a copy of this order and communicate the decision taken, to the fourth respondent and depending upon the result of the said Report, the fourth respondent after putting the encroachers including the private respondents to notice, shall take further action on merits and in accordance with law, within a further period of



twelve weeks thereafter and communicate the decision taken, to the petitioner, private respondents 5 to 23 as well as other encroachers."

6. On a reading of the said order, it is clear that this Court had directed the third respondent to act on the communication of the fourth respondent dated 11.12.2017 with the help of the jurisdictional Surveyor to cause inspection of Survey Nos.49, 50, 50/4, 51 at Muni Iyaa Kovil Street, Pudukudi, Thondi, Ramanathapuram District.

7. Admittedly, the petitioner is residing in the property in Survey No.49. That being the case, the order passed by this Court in the above said writ petition covers the petitioner also, though he was not made as a party in earlier writ petition.

8. When the petitioner has not challenged the correctness of the order passed under Section 6 of the Tamil Nadu Land Encroachment Act, 1905, the present writ petition filed for a writ of Mandamus, cannot be entertained.

9. Mr.A.K.Baskarapandian, learned Special Government Pleader appearing for the respondents submitted that since the petitioner has not challenged the order passed under Section 6 of the Act, he is liable to be evicted from the encroached land. Further, he submitted that the benefits granted under G.O(Ms.)No.854, Revenue Department, dated 30.12.2006, are not applicable to the petitioner.

10. After making elaborate submissions, the learned counsel for the petitioner submitted that the petitioner has given a representation dated 08.07.2018 to the third respondent and it would be suffice to direct the third respondent to consider and pass orders in accordance with law, for which, the learned Special Government Pleader has no objection.

11. In view of the submissions made by the learned counsel on either side, we direct the third respondent to consider the representation of the petitioner, dated 08.07.2018 and pass orders in accordance with law after giving due opportunity of personal hearing to the petitioner as well as to all the interested parties, within a period of four weeks from the date of receipt of a copy of this order.

12. With the above observations, this writ petition is disposed of. No costs. Consequently, the connected writ miscellaneous petition is closed.

Sd/
Assistant Registrar(AS)

/True copy/



To

1.The District Collector,
Ramanathapuram District,
Ramanathapuram.

2.The District Revenue Officer,
Ramanathapuram,
Ramanathapuram District.

3.The Revenue Divisional Officer,
Ramanathapuram,
Ramanathapuram District.

4.The Tahsildar,
Thiruvadanai,
Ramanathapuram District.

+1cc to Mr.S.SUNDARAPANDIAN, Advocate, SR.No. 74525

+1cc to M/s.Special Government Pleader,SR.No. 74337

W.P (MD) No.15077 of 2018
and

W.M.P (MD) No.13653 of 2018
20.07.2018

PS

KK/SKN RSK/SAR-4/30.07.2018/4P-7C/