



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 02.11..2018

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

and

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P. (MD) No.22181 of 2018

and

WMP (MD) No.20103 of 2018

WP (MD) No.10272 of 2015

and

WMP (MD) Nos.16984, 17047, 18219 and 18268 of 2018

M.Abdul Rahman

... Petitioner

vs.

1. The Commissioner,
Madurai Corporation,
Tallakulam, Madurai - 2.

2. The Executive Engineer,
Public Works Department,
Water Resource Department,
Thallakulam, Madurai.

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Mandamus forbearing the respondent from interfering in the peaceful possession and enjoyment of the petitioner in part of the property found in survey No.1225 resurvey No.3 of Madurai Town.

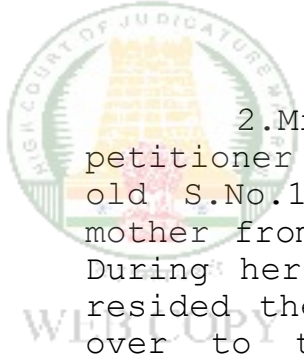
For Petitioner : Mr.C.M.Arumugam
For R1 : Mr.R.Murali
For R2 : Mr.VR.Shanmuganathan
Special Government Pleader

Amicus Curiea : Mr.Veera Kathiravan
Senior Counsel

O R D E R

[Order of the Court was made by **T.RAJA, J.**]

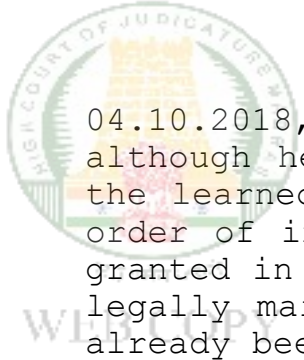
Mr.M.Abdul Rahman has filed the present writ petition under Article 226 of the Constitution of India, seeking writ of mandamus forbearing the Commissioner, Madurai Corporation and the Executive Engineer, PWD, Tallakulam, Madurai/the respondents 1 and 2 herein from interfering in the peaceful possession and enjoyment of the petitioner in part of the property found in Survey No.1225, Resurvey No.3 of Madurai Town.



2.Mr.C.M.Arumugam, learned counsel appearing for the petitioner in support of the prayer, submitted that the property in old S.No.1225 was in exclusive possession and enjoyment by his mother from the year 1950, followed from his grandmother one Salga. During her lifetime, a hut was constructed therein and they have resided there. However, in the year 1990, the property was handed over to the petitioner's mother Ayisha Beevi along with the construction. After some time, the same was entrusted to the petitioner and this is how the petitioner has acquired possession of the property covered in S.No.1225, Resurvey No.3, Madurai Town, in which, the petitioner has started to carry on a Small Scale Man Operated Industry in the name and style of Adam Iron Works. It is further stated that the petitioner has obtained permanent certificate from the Department of Industries and Commerce to carry on business in manufacturing the iron and wooden steals like Vadaichatti, Dosaikal, Paniara Chatty, Buckets etc. In the said permanent certificate, the location of the property has been clearly mentioned as Sungam Pallivasal Street, 6/6, Panaiyuran Kalvai Melpuram, Madurai, which is the property in old S.No.1225.

3.As the petitioner has been in uninterrupted peaceful possession from the life time of his grandmother, he was making strenuous effort to get patta. But the same was not responded favourably. In the meanwhile, on 15.02.1993, the petitioner's mother executed a gift settlement deed in his favour conveying the old S.No.1225. Later on, he has entered into a lease agreement in respect of a small extent of property 15 x 15 feet with the Executive Engineer, Public Works Department, Water Resource Department, Tallakulam, the second respondent herein, on 07.12.2010, fixing lease amount of Rs.7,200/- per annum with an advance amount of Rs.10,000/- for a period of three years, with a clause of renewal of lease. Therefore, when the petitioner has been in peaceful possession and enjoyment of the property as per the lease agreement entered into with the second respondent for a period of three years in respect of the land in question covered in S.No.1225, which is now belonging to PWD, he cannot be named as an encroacher. Moreover, the land in question cannot be construed as a hindrance to Panaiyur channel.

4.Referring to lease deed dated 07.12.2010 assigned in favour of the petitioner in respect of 15 x 15 feet equivalent to 75 square feet in S.No.1225, R.S.No.3, the learned counsel for the petitioner fairly submitted that although the said lease period stood expired in the year 2013, he already made a request for renewal of the lease deed, but till date, no order of cancellation of the lease agreement or renewal was issued to the petitioner. Therefore, the respondents cannot evict the petitioner on the ground that he is an unlawful occupant or encroacher. When the petitioner's application seeking renewal of lease is pending and no cancellation order of lease was issued by the second respondent, the petitioner having afraid of that any coercive steps will be taken in the light of the order passed by this Court in WP(MD)Nos.11467, 20884 and 20927 of 2018 on



04.10.2018, has come to this Court with the present writ petition, although he has filed a suit in O.S.No.500 of 2018 on the file of the learned Additional District Munsif Court, Madurai, in which, an order of interim injunction in respect of the land in question was granted in favour of the petitioner. Therefore, the writ petition is legally maintainable for the simple reason that the petitioner has already been protected by the interim order dated 01.10.2018 granted by the learned Additional District Munsif Court, Madurai.

5.The learned Senior Counsel Mr.M.Vallinayagam requested this Court to delink WP(MD)No.10272 of 2015 as the prayer in the writ petition is totally different from the one, for which, the matter was directed to be clubbed with the present writ petition. In the present writ petition (WP(MD)No.22181 of 2018), the issue raised is with regard to the encroachment made by the petitioner in Panaiyur channel covered in S.No.1225, that was originally belonged to the writ petitioner viz., M.Abdul Rahuman, from whom the second respondent acquired a part of the land. Thereafter, this has been sub divided as S.No.1225/2.

6.Referring to Section 16-A of the Land Acquisition Act, 1894, Mr.M.Vallinayagam, learned Senior Counsel submitted that the lease deed dated 07.12.2010 executed by the second respondent in favour of the petitioner in WP(MD)No.22181 of 2018 is liable to be treated as invalid lease by virtue of Section 16-A. As per Section 16A, no person or authority (other than the Government), for whom any land is acquired under this Act, shall transfer the said land or any part thereof by way of sale, mortgage, gift, lease or otherwise except previous sanction of the Government.

7.In the present case, admittedly, the land in question to an extent of 15 x 15 feet equivalent to 75 square feet in S.No.1225 was acquired by the second respondent, who has wrongly granted lease without any previous sanction of the Government. Therefore, it is hit by Section 16-A of the Land Acquisition Act, 1894. This apart, the said lease period has already been expired in the year 2013.

8.Mr.C.M.Arumugam, learned counsel appearing for the petitioner clarifying the survey number submitted that the petitioner got lease only in respect of the property covered in S.No.1225/2. In view of the above facts, the prayer sought in the writ petition is bound to be allowed.

9.Finally, Mr.M.Vallinayagam, learned Senior Counsel submitted that the writ petition in WP(MD)No.10272 of 2015 questioning the correctness of the order dated 12.01.2015 refusing the prayer of the petitioner for reconveyance of the land under Section 48-B of the Land Acquisition Act, 1894 cannot be clubbed with the present writ petition and hence, the same may be delinked.

10.We accept the request of the learned Senior Counsel. Since WP(MD)No.10272 of 2015 is dealing with a different issue, the same



is delinked from WP(MD)No.22181 of 2018 and the Registry is directed to list WP(MD)No.10272 of 2015 before the appropriate Court.

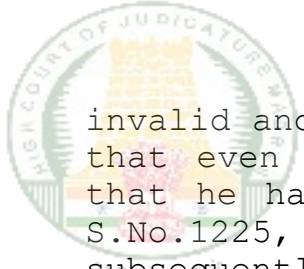
11.Mr.Veera Kathiravan, learned Senior Counsel, an *Amicus Curiae* submitted that this Court has already passed an order of removal of encroachment in Panaiyur kanmai.

12.Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the second respondent submitted that the lease deed dated 07.12.2010 in respect of 75 square feet from the land covered in S.No.1225 (new No.3) has been executed only in favour of Adam Trust, whereas, the present writ petition is filed by M.Abdul Rahman. Therefore, when M.Abdul Rahman is not a lessee, whereas, Adham Trust is the lessee, the petitioner is not entitled to maintain the writ petition. However, Mr.C.M.Arumugam, learned counsel submitted that M.Abdul Rahman is the Managing Trustee of Adam Trust and therefore, he is entitled to file the present writ petition. But the pleadings in the affidavit filed in support of the writ petition does not speak anything about the status of the Managing Trustee.

13.Again, proceeding further, Mr.Veera Kathiravan, learned Senior Counsel submitted that Adam Trust was granted lease in respect of only 75 square feet, covered in S.No.1225, even after the said lease got expired in the year 2013, the second respondent has not renewed the same, may be for the reason that they have become conversing with the legal aspects as covered under Section 16-A of the Act, which says that no person or authority (other than the Government) for whom any land is acquired, shall transfer the said land or any part thereof by way of sale.

14.Admittedly, the land covered in S.No.1225 was acquired from the property to an extent of 4364 square feet. While so, the lease deed entered in favour of Adam Trust, having not mentioned that the lease was granted in respect of land covered in S.No.1225/2, the petitioner cannot maintain the present writ petition, he pleaded.

15.Again referring to Section 14 of the Tamil Nadu Land Encroachment Act, 1905, Mr.Veera.Kathiravan, learned Senior Counsel further pleaded that by virtue of Section 14, no order passed or proceedings taken by any officer or authority or the State Government under this Act, shall be called in question in any Court, in any suit or application and no injunction shall be granted by any Court in respect of any action taken or to be taken by such officer. In the present case, an *ex parte* order of interim injunction was obtained by the petitioner from the Additional District Munsif Court, Madurai in O.S.No.500 of 2018, which clearly shows that the petitioner has not brought to the notice of the learned Additional District Munsif Court, Madurai about Section 14 of the Act which bars filing of any suit. Therefore, the order of interim injunction granted by the Additional District Munsif Court, Madurai is wholly



invalid and unenforceable in the eye of law. Further he would submit that even if the case of the petitioner is for a moment accepted that he has been granted lease to an extent of 75 square feet in S.No.1225, that got expired long ago in the year 2013 and subsequently, this has not been renewed which also clearly shows that the petitioner is an encroacher and he has not continued to pay his lease rent. We are in full agreement with the submission made by Mr.Veera.Kathiravan, learned Senior Counsel.

16.Now, it is relevant to refer to the order passed by this Court on 28.11.2017 in W.P(MD)No.19760 of 2017 (*suo motu*), the Registrar (Judicial), Madurai Bench of Madras High Court, Madurai Vs. The Chief Secretary, Government of Tamil Nadu, Secretariat, Chennai and 3 others, wherein this Court has given specific direction to the Commissioner, Madurai Corporation, to take steps to prevent dumping of garbage into the Panaiyur channels by imposing fines on those who are found dumping the garbage in accordance with the provisions of Madurai City Municipal Corporation Act, 1971 and the rules framed thereunder. Moreover, the State authorities were also further directed to take steps in accordance with law to remove the unauthorised encroachments along with the channels to facilitate cleansing the operations. The order further states that periodical reports (monthly report) shall be filed before a Division Bench of the Madras High Court at its Madurai Bench taking up the public interest litigation matters. Subsequent to the order passed by this Court on 28.11.2017 in WP(MD)No.19760 of 2017 giving various directions as we mentioned above, we have also entertained W.P.(MD) Nos.11467, 20884 and 20927 of 2018 on 04.10.2018 giving directions to the Commissioner, Madurai Corporation to clean up all the encroachments made on both sides of Panaiyur channel. In fact, reinstating the directions given by this Court on 28.11.2017, the Commissioner, Madurai Corporation was also present in the Court on the said date and expressed certain difficulties in complying with the directions issued by this Court stating that some of the encroachers are raising various objections even coming in front of the vehicle, not to proceed further. Therefore, this Court directed the Commissioner of Police, Madurai to assist the Commissioner, Madurai Corporation by sending requisite police personnel for removal of encroachment as directed by this Court. When the petitioner has been admittedly in possession and enjoyment of the lands covered in S.No.1225, New S.No.3, as 4364 square feet from the said S.No.1225 were acquired by the second respondent, it is not open to the second respondent to lease out any such land to Adam Trust. In any event, the period of lease also stood expired in the year 2013. Thereafter, as contended by the learned counsel for the petitioner, there is no need to pass an order cancelling the lease period. The reason is when the petitioner enjoyed the full 3 years of lease period, question of cancelling the lease already granted to the petitioner does not arise. Moreover, the application made by the petitioner for renewal of lease has not been accepted. In addition thereto, since the year 2013 the petitioner also ceased to pay the lease amount, hence, he is an encroacher only.



17. In view of the above reasons, this writ petition fails and the same is dismissed accordingly. The interim injunction granted to the petitioner in O.S.No.500 of 2018 will not stand in the way of removal of encroachment by the respondents, inasmuch as the civil suit filed by the petitioner is not legally maintainable in the light of Section 14 of the Tamil Nadu Land Encroachment Act, 1905. No costs. Consequently, WMP(MD)No.20103 of 2018 is closed.

Sd/-
Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar(CS-I)

To

The Executive Engineer,
Public Works Department,
Water Resource Department,
Thallakulam, Madurai.

Copy to:
Section Officer, Writ Section,
Madurai Bench of Madras High Court,
Madurai.

(Put up the Order in the WP(MD).No.10272/15)

+1cc to Mr.C.M.Arumugam, Advocate Sr.No.94632
+1cc to M/s.D.Nallathambi, Advocate Sr.No.94320
+1cc to SPL.Govt.Pleader, Sr.No.94446

MJ

KM/PM/SAR1/17.12.2018/6P/6C

W.P.(MD) No.22181 of 2018
and
WP(MD)No.10272 of 2015
02.11.2018