

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :01.08.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.25300 of 2009

and

WMP.Nos. 1 and 2 of 2009

Franchis @ Jayakumar

..Petitioner

vs

1. The Principal Chief Conservator of Forests,
Chennai - 600015.

2. The Forest Range Officer,
Tiruthani.

3. The District Collector,
Tiruvellore District,
Tiruvellore.

4. Government of Tamil Nadu
Represented by Secretary to Government
Revenue Department,
Secretariat,
Chennai- 600009.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a certiorarified mandamus or any other appropriate writ, direction or order in the nature of a writ, calling for the records of the second respondent relating to the notice dated 24.11.2009 issued to the petitioner, quash the same and to issue consequent directions to the respondents to desist from disturbing the petitioner with his peaceful possession and enjoyment of the land of the extent of 20' x 40' in Survey No.334/3 and house built thereon bearing Door No.25 KK. Nagar, Chittor Road, Tiruthani Taluk, Tiruvallur District.

For Petitioner : Mr. A. Damodaran

For Respondents : Mr. G. B. Rajesh,
Government Advocate for
R1 and R2

Mr.J. Ramesh, AGP for R3 and R4

ORDER

The Writ Petition is filed to call for the records of the second respondent relating to the notice dated 24.11.2009 issued to the petitioner, quash the same and to issue consequent directions to the respondents to desist from disturbing the petitioner with his peaceful possession and enjoyment of the land to the extent of 20' x 40' in Survey No.334/3 and house built thereon bearing Door No.25 KK. Nagar, Chittoor Road, Tiruthani Taluk, Tiruvallur District.

2. The case of the petitioner is that the petitioner in possession and enjoyment of the landed property measuring 20' x 40' in Survey No.334/3, Tiruthani Town and Taluk, Tiruvallur District with a house constructed thereon bearing Door No.25 K.K.Nagar, Chittoor Road, Tiruthani Town. The said property was enjoyed by his father Mr. Anthony, thereafter the petitioner had been in possession and enjoyment of the property uninterruptedly and he had been paying kist to the Revenue Department and house tax to the Tiruthani Municipality. Further the petitioner stated that he spent a sum of Rs.25,000/- before 30 years to reclaim the land and make it fit for construction and thereafter has been residing in the said house for more than two decades. He further averred that there are 153 families like him who have been in possession and enjoyment of small piece of house sites in Survey No.334 and residing in pucca houses or huts constructed thereon. While being so, the Forest Settlement Officer, Kancheepuram issued notice dated 04.03.1991 to all the above residents including the petitioner informing that it was proposed to form a Forest Block consisting of S.No.334 (19.73.0 Hrs) and S.No.335 (24.03.05) under Section 6 of the Tamil Nadu Forest Act and called for objection from the petitioner and other residents. After enquiry, the Forest Settlement Officer, Kancheepuram by his order dated 28.11.1991 issued orders declaring 17.23.0 hrs. in S.No.334 and 24.03.05 in S.No.335 as Forest Block, by excluding the area of 2.50.0 Hrs. The petitioner stated that the petitioner's landed property and house is situated in the excluded portion of 2.50 Hrs and not in the Forest Block constituted as per the above proceedings of the Forest Settlement Officer, Kancheepuram on 28.11.1991. Further, recognition of the occupation of the property by the petitioner, the Tamil Nadu Electricity Board has provided Service connection for the property and Civil Supplies Department has also issued Ration Card and the Election Commission also recognized him as a voter. While being so, the second respondent sought to interfere with the peaceful possession and enjoyment of the property by issuing notices dated 05.12.2006, 28.12.2007, and 17.04.2008 purported to be under Section 68-A of the Tamil Nadu Forest Act, 1882 to show cause as to why the petitioner should not be evicted from the property and it is further alleged in

the impugned notice that the petitioner is an encroacher. Aggrieved by the said order, the petitioner instituted a suit in O.S.No.11 of 2008 on the file of the District Munsif's Court, Tiruthani for permanent injunction and the suit was dismissed on 28.08.2009. Thereafter, the second respondent issued a notice dated 24.11.2009 calling upon the petitioner to remove the encroachment on his own against which the present Writ Petition is filed.

3. Mr. A. Damodaran, learned counsel for the petitioner would submit that the petitioner possessed valid documents in order to establish his possession and enjoyment of the said property. Without considering the same, as if the petitioner is an encroacher the impugned order was passed. Similarly, the petitioner also filed another Writ Petition before this Court challenging another order dated 23.02.2009 which was passed by the District Collector, however the Hon'ble First Bench had dismissed the same, which was nothing to do with this case and therefore prayed for allowing the Writ Petition.

4. Sum and Substance of the counter are as follows:
The petitioner constructed a house in Survey No.334/3 which was already declared as a Reserved Forest hence as per the Forest Act, the petitioner is an encroacher and he has been served additional notice by the competent authority namely the Forest Range Officer, Tirutani.

5. As per the provisions of the Tamil Nadu Forest Act 1882 under section 68 A during the years 2006-2009. Against this notice, the petitioner and others preferred W.P.No.2279 of 2008 before the Hon'ble High Court. In the meantime, the petitioner made representation before the District Collector. While disposing W.P.No.2279 of 2008, this Court by order dated 05.02.2008 directed the respondents to consider the objections made by the petitioner and others. Thereafter the District Collector passed order on 23.02.2009. Challenging the same, the petitioner preferred W.P.No.4271 of 2009 before this Hon'ble Court. The Hon'ble First Bench of this Court dismissed the said Writ Petition observing that the District Collector by his order dated 23.01.2002 has categorically stated that the petitioner has encroached the land in the reserved forest and therefore no indulgence be shown to him. Hence, the first bench dismissed the Writ Petition observing that the petitioner was not in a position to establish anything contrary to the finding of the District Collector.

6. Considering the facts and circumstances and on the perusal of the records, it is seen that the petitioner is in occupation of the forest land and the petitioner had already made representation to the District Collector despite being

unsuccessful in that process, the present Writ Petition is filed challenging the eviction notice issued by the forest Range Officer under Section 68 A of the Forest Act, 1982. During the pendency of the writ petition, the petitioner made a representation to the District Collector for regularizing his occupation of the said land. However, the District Collector passed the order dated 23.02.2009 stating that the petitioner had encroached the forest land and the said order was challenged before the first bench of this Court which dismissed the Writ Petition observing that

" That apart, the 3rd respondent viz., the District Collector, by order dated 23.02.2009, has categorically stated that the petitioner has encroached the land in the Reserved Forest and therefore, no indulgence be shown to him. The District Collector, after considering all aspects, rightly came to the conclusion that the land in possession of the petitioner is in Reserved Forest Area. The petitioner is not in a position to establish anything contrary to the finding of the District Collector".

7. Since the First Bench had taken a categorical view on the very same property that it is a Reserved Forest land, and the petitioner was not able to establish anything contrary to that, I am not inclined to interfere with the eviction notice. Accordingly, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Principal Chief Conservator of Forests, Chennai - 600015.
2. The Forest Range Officer, Tiruthani.
3. The District Collector, Tiruvellore District, Tiruvellore.
4. The Secretary to Government, Government of Tamil Nadu Revenue Department, Secretariat, Chennai- 600009.

+1 cc to The Government Pleader, Sr.No. 66040

AKM/27.09.19/4P-6C /

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