

In the High Court of Judicature at Madras

Dated : 13.2.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Writ Appeal Nos.373 & 374 of 2019 &
CMP.Nos.3622 & 3623 of 2019

Shree Agarwal Sabha, rep.by
Mr.Mohanlal Sharaf,
The Vice President of the Sabha ...Appellant/ Petitioner
Vs

1.The District Collector, Chennai
District.

2.The Tahsildar, Egmore-Nungambakkam
Taluk, Chennai-31. ...Respondents/ Respondents

APPEALS under Clause 15 of the Letters Patent against
the common order dated 28.1.2019 made in W.P.Nos.15243 and
20994 of 2005.

Prayer in in W.P.Nos.15243 and 20994 of 2005:

Filed under Article 226 of the Constitution of India,
to issue a Writ of Certiorarified Mandamus calling for the
records relating to the proceedings of the second
respondent in Ref.No. A2 44251/93 dated 31.5.2005 issued by
the second respondent and quash the same and direct the
respondent to confirm the patta issued to the petitioner on
20.7.2004 in respect of T.S.No. 3 blockNo.2 Naduvakkarai
Village to the extent of 0.13.44.0 hectares or 5 grounds
and 1010 sq.ft.

For Appellant : Mr.A.L.Somayaji, SC for M/s.AAV Partners
For Respondents : Mr.V.Jayaprakash Narayanan, SGP

COMMON JUDGMENT
(Judgment was delivered by T.S.SIVAGNANAM, J)

We have heard Mr.A.L.Somayaji, learned Senior Counsel appearing on behalf of M/s.AAV Partners, learned counsel on record for the appellant and Mr.V.Jayaprakash Narayanan, learned Special Government Pleader accepting notice for the respondents. With consent of the learned counsel on either side, the writ appeals themselves are taken up for joint disposal.

2. The appellant is aggrieved by the common order passed in W.P.Nos. 15243 and 20994 of 2005 dated 28.1.2019.

3. The appellant filed the said writ petitions challenging the notice dated 25.2.2005 issued under Section 7 of the Land Encroachment Act, 1905 (for short, the Act) and the notice dated 31.5.2005 issued under Section 6 of the Act.

4. The learned Single Judge, after taking into consideration the counter affidavit as well as the additional counter affidavit, which were filed before the Court, held that the appellant cannot claim any right over the land in question, as it is a Government land and that the question of granting patta would not arise. In the impugned common order, there were certain other observations and there had been a reference to earlier order passed in the other writ petition relating to encroachment in the Government land.

5. The appellant filed affidavits before us stating that initially, the appellant had engaged a counsel, that subsequently, there was a change of counsel and that the writ petitions were kept pending from the year 2005. It is further seen that when the matters were listed on 23.1.2019, it appears that the learned counsel on record for the appellant - writ petitioner sought for an adjournment. However, the same was declined and immediately on 28.1.2019, orders were passed dismissing the said writ petitions.

6. The learned Senior Counsel appearing on behalf of the appellant, by referring to the affidavits dated 12.2.2019 filed by one Mr.Ashok Kedia, submits that additional counter affidavits were produced before the Writ Court, but copies of the same were not served on the appellant.

7. Be that as it may, we have considered the merits of the matter.

8. In the common impugned order, in paragraph 24, the action initiated by the official respondents for eviction of the appellant has been given in a tabulated form. From the details contained in the tabulated form, it is seen that on 18.6.1997, the Tahsildar, Egmore Nungambakkam Taluk

issued the notice in Form No.7 treating the appellant as an encroacher of a Government land. As against the same, the appellant preferred an appeal before the District Collector concerned on 19.6.1997, which was taken on file as A2/44251/93.

9. Subsequently, it appears that the appellant had given a reply and immediately thereafter, approached this Court by filing W.P.No.16682 of 1997. The Tahsildar had given parawise remarks to the District Collector and those remarks were forwarded to the Government Pleader on 29.6.1999. It is not clear as to why the parawise remarks were not incorporated in the counter affidavit filed before this Court in that writ petition. Further, the said writ petition namely W.P.No.16682 of 1997 was pending from 1997 to 2004. But, on 23.3.2004, the appellant withdrew W.P.No.16682 of 1997 and hence, it was dismissed as such.

10. However, on 03.8.2004, there had been an entry in the transfer register in favour of the appellant vide proceedings in TR/730/04-05. It also appears that the District Collector, vide D.O.Letter dated 10.6.2005, directed the entry dated 03.8.2004 to be removed stating that an illegal entry had been made in favour of the appellant and directed action to be initiated. Immediately on the same day i.e 10.6.2005, the notice/order in Form No.6 of the Act was served on the appellant. Thereafter, the present writ petitions were filed, in which, an order of interim stay was granted on 05.7.2005 and a counter was stated to have been filed by the District Collector in W.P.No. 20994 of 2005. However, the date of filing of the counter has not been given.

11. It is stated that in January 2019, a draft counter affidavit had been prepared and sent to the Government Pleader for approval.

12. The above facts will clearly show that there had been certain entries in the transfer register, when, admittedly, the Department treated the appellant as an encroacher and issued a notice in Form No.7 dated 18.6.1997. In such a background, it is not known as to how there could have been a transfer in favour of the appellant. This transfer had been effected after the appellant withdrew the earlier writ petition in W.P.No.16682 of 1997 on 23.3.2004.

13. The manner, in which, the officials had acted does not infuse confidence in the mind of this Court. Be that as it may, from the facts set out in paragraph 24 of the impugned common order, one thing is clear that the

appellant was not put on notice before the entry made on 03.8.2004 was removed. We say so because the respondents had not stated about any such notice being issued before the deletion of the entry dated 03.8.2004, which, according to the District Collector, was an illegal entry.

14. Assuming that the appellant was informed about the action, subsequently, a fresh notice in Form No.7 ought to have been issued and the respondents committed an error by directly issuing the order in Form No.6 dated 10.6.2005. It is not clear as to how the officials had acted in such a manner. In any event, the endeavour of the respondents is to ensure that the Government land is not taken away by any private individual for their personal gain. However, in doing so, proper procedure ought to have been adopted by the respondents. If there is a procedural error, there is every probability that the Court may interfere with such orders as being in violation of the principles of natural justice. Probably, some of the officials paved way by passing such orders.

15. In any event, the appellant is stated to be in possession for several years and the notice issued in Form No.7 on 18.6.1997 could never be implemented because of the long drawn litigation and it is not clear as to why full facts were not placed by duly serving on the appellant. Therefore, we are of the considered view that no useful purpose will be served by keeping the writ appeals pending since there are several procedural flaws committed by the respondents, for reasons best known to them.

16. With regard to the observations made by the learned Single Judge pertaining to encroachment in the Government land and water bodies, those observations were perfectly justified. However, considering the facts of the case at this juncture, those observations cannot be put against the appellant and therefore, those observations shall remain as observations or settlement of law as propounded by this Court in several decisions.

17. For the above reasons, we dispose of the writ appeals by directing the respondents - Competent Authorities to issue a proper notice with full particulars to the appellant within 15 days from the date of receipt of a copy of this judgment. The appellant shall be granted four weeks' time to file their objections and on receipt of the objections, an opportunity of personal hearing shall be granted to the authorized representative of the appellant and a speaking order shall be passed on merits and in accordance with law within eight weeks thereafter and

communicated to the appellant. Till the above exercise is completed, the possession of the appellant shall not be disturbed. Since it is found that an illegal entry had been made by certain officials, responsibility shall be fixed and action shall be initiated against those erring officials. No costs. Consequently, the connected CMPs are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

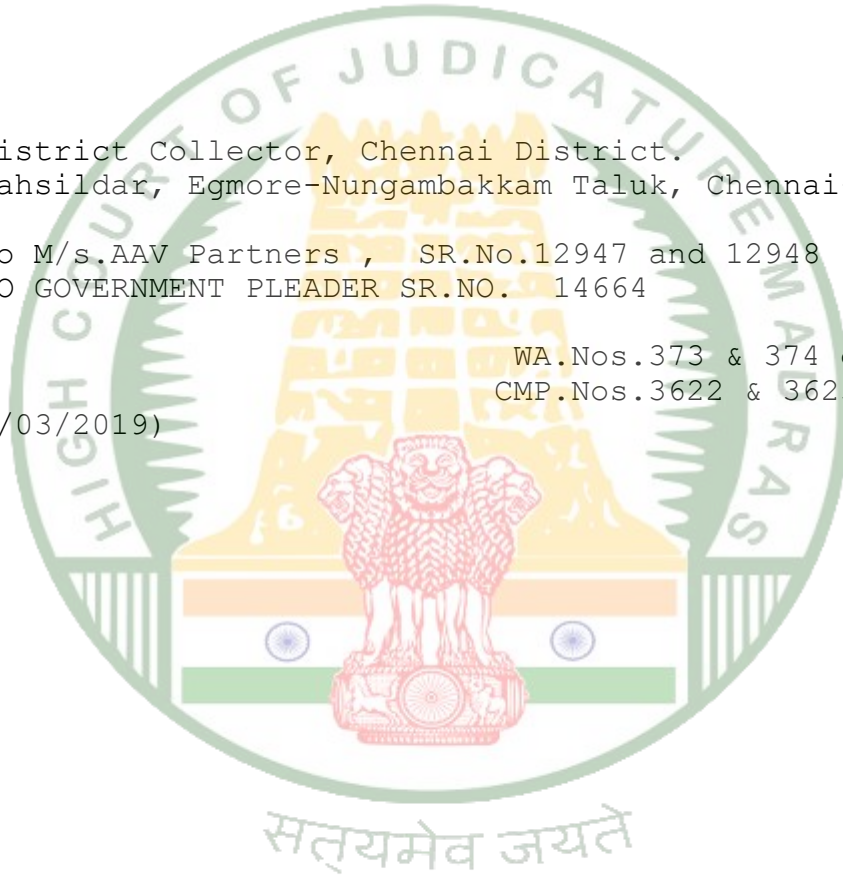
RS
To

- 1.The District Collector, Chennai District.
- 2.The Tahsildar, Egmore-Nungambakkam Taluk, Chennai-31.

+2ccs to M/s.AAV Partners , SR.No.12947 and 12948
+1 CC TO GOVERNMENT PLEADER SR.NO. 14664

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CMP.Nos.3622 & 3623 of 2019

A.SK(14/03/2019)



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