

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI

AND

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.26822 of 2019

R.Baskaran

.. Petitioner

vs.

1.The District Collector,
Nagapattinam District,
Nagapattinam.

2.The Tahsildar,
Nagapattinam Taluk,
Nagapattinam District.

3.The Revenue Inspector,
Nagapattinam Taluk,
Nagapattinam District.

.. Respondents

Petition under Article 226 of the Constitution of India,
praying for issuance of a Writ of Certiorari relating to the
Section 7 Notice of the Land Encroachment Act dated 18.06.2018
issued by the 3rd respondent relating to the petitioner's
property and quash the same.

For Petitioner : Mr.S.Parthasarathy

For R1 to R3 : M/s.V.Jayaprakash Narayanan
Government Pleader.

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O R D E R

(By DR.VINEET KOTHARI, J.)

The present Writ Petition has been filed to quash Section 7
Notice of the Land Encroachment Act dated 18.06.2018 issued by
the 3rd respondent.

2. This is the second notice issued under Section 7 of the Tamil Nadu Encroachment Act, 1905. Earlier, the 2nd respondent had issued similar notice under Section 7 of the said Act on 23.02.2017 and thereafter, an order came to be passed under Section 6 of the Act on 10.03.2017.

3. Under these Circumstances, the petitioner filed W.P.No.8170 of 2017. By an order dated 06.04.2017, this Court disposed the above Writ Petition. The relevant portion of the said order in para Nos.7 to 9 are extracted hereunder for ready reference:

" 7.A perusal of the above paragraph 10 (c) reveals that the writ petitioner has said that if he is found to be in encroachment of S.No.1318/2, he is ready to abide by any action including penal action that may be taken against him. This is his sworn affidavit and we take notice of that averment / assertion.

8.In the light of the fact that the learned Additional Government Pleader, who has accepted notice on behalf of respondents 1 and 2 and asserts that they would proceed with regard to the encroachment in S.No.1318/2 alone, nothing survives in the writ petition.

9.The writ petition, accordingly, stands dismissed. Consequently, W.M.P.No.8953 of 2017 is also dismissed. There shall be no order as to costs. Though obvious, we make it clear that this order will not stand in the way of any legal action that may be initiated by the third respondent-temple against the writ petitioner qua S.No.1316."

4. Heard the learned counsel for the petitioner Mr.R.S.Parthasarathy. The learned Government Pleader M/s.V.Jayaprakash Narayanan was directed to accept notice on behalf of the Respondents 1 to 3, who has put in appearance. Perused the materials available on record.

5. Further, the learned counsel for the petitioner submitted that even though the petitioner had given reply to the earlier notice Section 7 of the Land Encroachment Act dated 1905, without considering the same, the Tahsildhar has issued the Notice under Section 6 of the Land Encroachment Act. Further, the petitioner has already filed a suit in O.S.No.5 of 2017 which is pending before the District Munsif Court, Nagapattinam.

6. The learned Government Pleader would submit that the first respondent, District Collector, Nagapattinam may be permitted to pass appropriate orders, with regard to the encroachment which is said to be made by the petitioner in Survey No.1318/2 on the petition filed under Section 6 of the Land Encroachment Act, 1905.

7. Having regard to the submissions made by the learned counsel appearing on either side, we are of the opinion that the relief sought for is pre-mature. Multiple proceedings have been initiated by the petitioner for the same cause. Therefore we direct that the first respondent viz., District Collector should first pass an appropriate order in accordance with law, under Section 6 of the Act, within a period of four weeks from the date of receipt of a copy of this order, after giving an opportunity of hearing to the petitioner. The petitioner and the second respondent may appear before the first respondent in the first instance on 26.09.2019.

8. With the above observations, the writ petition is disposed of. No cost.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

kkd

To

1.The District Collector,
Nagapattinam District,
Nagapattinam.

2.The Tahsildar,
Nagapattinam Taluk,
Nagapattinam District.

3.The Revenue Inspector,
Nagapattinam Taluk,
Nagapattinam District.

+1cc to Government Pleader sr.78973

+1cc to Mr.S.Parthasarathy, Advocate sr.78382

W.P.No.26822 of 2019

pa(co)

nr 27/09/2019