

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.10.2019

CORAM

THE HON'BLE MR. JUSTICE M. SATHYANARAYANAN
AND
THE HON'BLE MR. JUSTICE N.SESHASAYEE

WP.No.30403 of 2019 and
W.M.P.No.30396 of 2019

Mr.V.Srinivasan

.. Petitioner

Versus

1.The District Collector,
District Collectorate,
Thiruvallur District.

2.The District Revenue Officer,
District Collectorate,
Thiruvallur District.

3.The Tahsildar,
Ponneri Taluk,
Thiruvallur District.

4.The Revenue Inspector,
Thirupalaivanam
Ponneri Taluk,
Thiruvallur District.

..... Respondents

PRAYER:- Writ petition filed under Article 226 of the Constitution of India prays to issue a Writ of Certiorarified Mandamus to call for the records pertaining to impugned notice in Ref.No.Na.Ka.1909/2019/A2 dated 20.08.2019 by the 4th respondent and quash the same and direct the respondents to consider the representation dated 03.09.2018 seeking for exchange of petitioner's land in lieu of the lands occupied by the petitioner in Survey no.1748/2, Medhur Village, Ponneri Taluk, Thiruvallur District.

For Petitioner : Mr.V.R.Kamalanathan

For Respondents : Mr.E.Manoharan
Additional Government Pleader

ORDER

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

The wife of the petitioner had purchased a land measuring an extent of 1.36 cents comprised in S.No.1748/1, Medhur Village, Ponneri Taluk, Thiruvallur District, through a registered Sale Deed dated 12.12.1990 and after obtaining necessary planning permission had also put up superstructure strictly in accordance with the sanctioned plan / building permit.

2. Mr.V.R.Kamalanathan, learned counsel appearing for the petitioner has drawn the attention of this Court to the impugned notice issued under Section 7 of the Tamil nadu Land Encroachment Act, 1905 and would submit that notices has been issued alleging that the petitioner had encroached upon 105 sq.m of land in S.No.1748/2 classified as 'Grazing Land' and notices also says about the existence of building on the land. The learned counsel appearing for the petitioner would submit that the petitioner is in possession of a Government Land in S.No.1748/2A and it is primarily used for agricultural purpose and there is no building at all upon the said land and taking advantage of the said notice, the Revenue officials may take steps to demolish the superstructure in S.NO.1748/2 for which the petitioner is having lawful title and possession and in the light of the said apprehension, the petitioner is constrained to approach this Court by filing this writ petition.

3. Mr.E.Manoharan, learned Additional Government Pleader accepts notice on behalf of the official respondents 1 to 4 and would submit that since the petitioner is having efficacious alternative remedy under the provision of the Tamil Nadu Land Encroachment Act, 1905, the writ petition is not at all maintainable. In response to the said submission, the learned counsel appearing for the petitioner has invited attention of this Court to the replies dated 03.09.2019 submitted to the respondents and would submit that survey and measurement of the land is done as requested by the petitioner, which would reveal that there is no superstructure in the land in S.No.1748/2A and prays for appropriate orders.

4. This court has considered the rival submission and also perused the materials placed before it.

5. It is relevant to extract Sections 7, 6, 10 and 10-B of the Tamilnadu Land Encroachment Act, 1905:

"Section 6: Liability of person unauthorisedly occupying land to summary eviction, forfeiture of crops etc.- (1) Any person unauthorisedly occupying any land for which he is liable to pay assessment under section 3

or section 3-A may be summarily evicted by the Collector or subject to his control, by the Tahsildar or Deputy Tahsildar or any other officer authorised by the State Government in this behalf (hereinafter referred as the Authorised Officer) and any crop or other product raised on the land shall be liable to forfeiture and any building or other construction erected or anything deposited thereon shall also, if not removed by him after such written notice as the Collector or subject to his control, the Tahsildar or Deputy Tahsildar or authorised officer may deem reasonable, be liable to forfeiture. Forfeitures under this section shall be adjudged by the Collector or subject to his control by the Tahsildar, or Deputy Tahsildar, or authorised Officer and any property so forfeited shall be disposed of as the Collector or subject to his control the Tahsildar or Deputy Tahsildar or authorised officer) may direct.

(2) An eviction under this section shall be made in the following manner namely: By serving a notice in the manner provided in section 7 on the person reputed to be in occupation or his agent requiring him within such time as the Collector or the Tahsildar or Deputy Tahsildar or Authorised Officer may deem reasonable after receipt of the said notice to vacate the land, and, if such notice is not obeyed, by removing or deputing a subordinate to remove any person who may refuse to vacate the same, and if the officer removing any such person shall be resisted or obstructed by any person, the Collector or the Tahsildar, or Deputy Tahsildar or authorised officer shall hold a summary inquiry into the facts of the case, and if satisfied that the resistance or obstruction was without any just cause and that such resistance or obstruction still continues, may issue a warrant for the arrest of the said person and on his appearance commit him to close custody in the office of the Collector or of any Tahsildar or Deputy Tahsildar or authorised officer for such period not exceeding 30 days as may be necessary to prevent the continuance of such obstruction or resistance or may send him with a warrant in the form of the schedule for imprisonment in the civil jail of the district for the like period.

Provided that no person so committed or imprisoned under this section shall be liable to be prosecuted under sections 183, 186 or 188 of the Indian Penal Code in respect of the same facts.

(3) Any authorised officer taking proceedings under this section shall make a report in writing containing such particulars as may be specified in rules or orders

made under Section 8 to the Collector, Tahsildar or Deputy Tahsildar having jurisdiction.

Section 7: Prior notice to person in occupation: Before taking proceedings under section 6 the Collector or tahsildar or Deputy Tahsildar or Revenue Inspector or any authorised officer or any other officer specified by the State Government in this behalf (not being an authorised officer) (hereinafter referred to as the 'specified officer as the case may be shall cause to be served on the person reported to be in unauthorised occupation of land being the property of Government a notice specifying the land so occupied and calling on him to show cause before a certain date why he should not be proceeded against under section 6.

Such notice shall be served in the manner prescribed in section 25 of the Tamil Nadu Revenue Recovery Act, 1864, or in such other manner as the State Government by rules or orders under Section 8 may direct.

Provided that no such notice shall be necessary in the case of any person unauthorisedly occupying any land, if he had been previously evicted from such land under section 6 or if he has previously vacated such land voluntarily after the receipt of a notice under section 5-B or under this section:

Provided further that where the notice under this section is caused to be served by any Revenue Inspector or any specified officer he shall require the person reputed to be in unauthorised occupation of the land to show cause against such notice to the Collector, Tahsildar, Deputy Tahsildar or authorised person having jurisdiction, as the case may be and shall also make a report in writing containing such particulars as may be specified in rules or orders made under section 8 to the Collector, Tahsildar, Deputy Tahsildar or authorised person having jurisdiction, as the case may be".

"Section 10:- An appeal shall lie [a] to the Collector from any decision or order passed by a Tahsildar or Deputy-Tahsildar [or an authorised officer] under this Act, and [b] to the District Collector from any decision or order passed otherwise than on appeal, and [c] to the Board of Revenue from any decision or order of a District Collector otherwise than on appeal.

Section 10-B:- Pending disposal of any appeal or application or proceedings for revision under this Act, the Collector, the District Collector, the Board of Revenue, or the State Government, as the case may be, may by order, and subject to such conditions as may be specified therein, stay the execution of the decision or

order appealed against or sought to be revised.”

6. In the considered opinion of this Court, the petitioner is having effective alternative remedy under Section 10 of the Tamilnadu Land Encroachment Act, 1905 and therefore it is open to him to avail the said remedy if the petitioner is so advised. Though the petitioner prays for larger relief, this Court, in the light of the above facts and circumstances and without going into the merits of the claim projected by the petitioner either in his representation submitted in response to the impugned notice or in the writ petition, grants liberty to the petitioner to avail the appeal remedy along with the petition for Stay within a period of two weeks from the date of receipt of a copy of this order and till such time, the 3rd respondent shall defer further decision in pursuant to the impugned notice. The 1st respondent or the 2nd respondent may entertain the appeal, if the papers are otherwise in order and give a disposal to the said petition at the earliest and also accord priority for disposal of the main appeal petition itself in accordance with law at the earliest point of time.

7. The writ petition stands disposed of with the above direction. No costs. Consequently connected miscellaneous petition is disposed of.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

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To

1.The District Collector,
District Collectorate,
Thiruvallur District.

2.The District Revenue Officer,
District Collectorate,
Thiruvallur District.

3.The Tahsildar,
Ponneri Taluk,
Thiruvallur District.

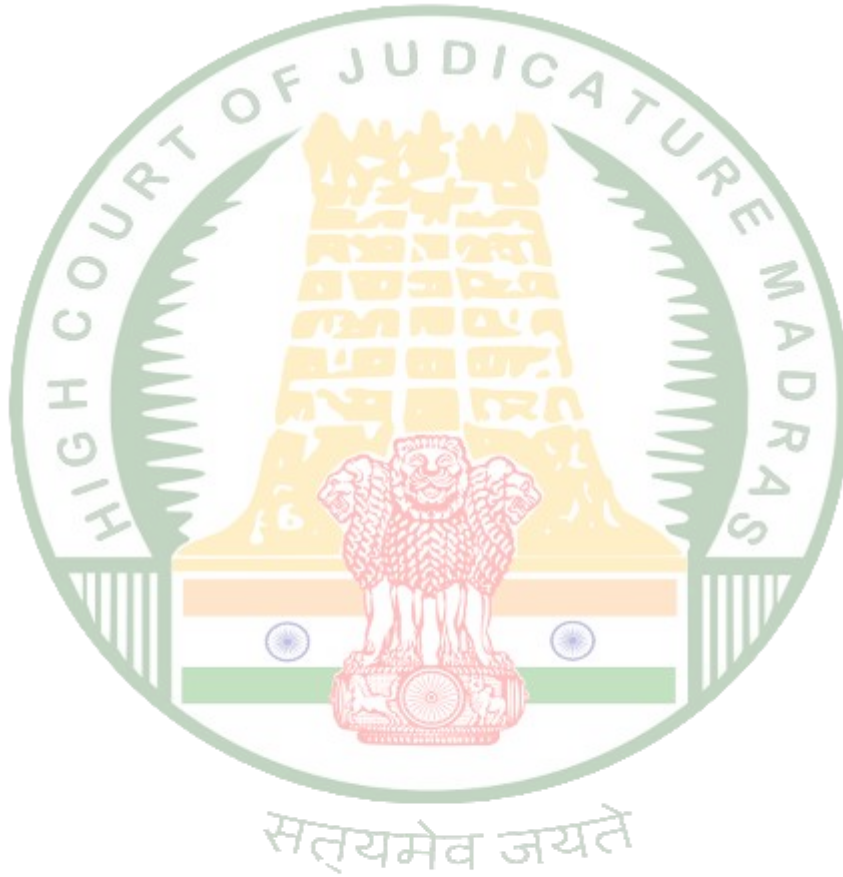
4.The Revenue Inspector,
Thirupalaivanam
Ponneri Taluk, Thiruvallur District.

+1cc to Mr.V.R.Kamalanathan, Advocate SR.No.89268

+1cc to Government Pleader SR.No.89648

WP.No.30403 of 2019

VG I(CO)
GMY(06/12/2019)



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