

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND

THE HONOURABLE MR.JUSTICE N. SESHASAYEE

W.P.No.31516 of 2019
and WMP No.31710 of 2019

K.Ayyasami

..Petitioner

Vs

1. The District Collector
Collectorate
South Palpannaichery
Nagapattinam.

2. The Tahsildar
Nagapattinam Taluk Office
Nagapattinam.

3. The Revenue Inspector
Thirukannapuram
Nagapattinam Taluk & District.

..Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent order dated 30.10.2019 issued under Section 6 of Tamil Nadu Land Encroachment Act, 1905 and quash the same and direct the 1st respondent to conduct an enquiry after giving notice to the petitioner and giving opportunity of being heard and thus render justice.

For Petitioner : Mr.K.Chandrasekaran

For Respondents: Mr.P.S.Sivashanmugasundaram,
Special Government Pleader.

O R D E R

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

By consent, this writ petition is taken up for final disposal.

2. The petitioner claims that a land measuring to an extent of 0.59.5 Ares in R.S.No.57/4, situate at Kurumbur Village,

Nagapattinam Taluk is classified as 'Natham' (house site) and is also entered in the A Register of the said village.

3. Mr.K.Chandrasekaran, learned counsel appearing for the petitioner would submit that the entire extent of land in the said survey number was once owned by the family of Mohamed Ibrahim Rawther and Umma Gani Ammal and there was a registered partition on 10.09.1945 and the wife of the petitioner had purchased an extent of 34 cents in R.S.No.57/4 and yet another extent of 96 cents in R.S.No.58/2, through a registered sale deed dated 25.04.1984, bearing document No.999/84 on the file of the Sub-Registrar, Peralam and also enjoying the same as absolute owner. It is the further submission of the learned counsel for the petitioner that one Mr.Murugavel, who is inimical to the petitioner had filed W.P.No.20830 of 2019, as if the petitioner was an encroacher and this Court disposed of the writ petition, directing the respondents therein to consider and dispose of the representation in accordance with law and contrary to the said direction and without looking into the relevant revenue records, the second respondent had initiated action under the provisions of the 'Tamil Nadu Land Encroachment Act, 1905' (hereinafter referred to as 'said Act') by issuing notices under Sections 7 and 6 of the said Act and therefore, he is constrained to approach this Court by filing this writ petition.

4. Per contra, Mr.P.Sivashanmugasundaram, learned Special Government Pleader, who accepts notice on behalf of the respondents would submit that as against the decision or order caused under the provisions of the Tamil Nadu Land Encroachment Act, 1905, the petitioner is having an effective alternate remedy under Section 10 of the said Act and also there is a provision for stay available under Section 10-B of the said Act and hence, this writ petition is not maintainable.

5. It is relevant to extract Sections 10 and 10-B of the said Act:

"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. 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, permits the petitioner to file an appeal along with a petition for stay against the impugned notices, with supporting and relevant documents to the first respondent within a period of four weeks from the date of receipt of a copy of this order and the first respondent or delegated authority entertain the appeal if the papers are otherwise in order and take a petition for stay and give a disposal within three weeks from the date of entertainment of the said appeal and dispose of the same in accordance with law and communicate the decision taken, to the petitioner and till such time, the second respondent shall defer further proceedings in terms of the impugned notices. It is also open to the first respondent or delegated authority to dispose of the appeal itself at an early date.

7. This writ petition is disposed of accordingly. Consequently, connected miscellaneous petition is also closed. No costs.

s/d-
Assistant Registrar(J)

True Copy

Sub-Assistant Registrar

vsm

To

1.The District Collector
Collectorate
South Palpannaichery
Nagapattinam.

2.The Tahsildar
Nagapattinam Taluk Office
Nagapattinam.

3.The Revenue Inspector
Thirukannapuram
Nagapattinam Taluk & District.

+1 CC to Mr.K.Chandrasekaran, Advocate sr 92928.

W.P.No.31516 of 2019
and WMP No.31710 of 2019

SP(21/11/2019)