

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

W.P.No.31727 of 2019
and
W.M.P.No.31931 of 2019

Shree Aagarsesn Steel Industries Pvt. Ltd.,
Rep. by its Managing Director R.K.Agarwal,
Sadayankuppam Road,
Sadayankuppam,
Thiruvottiriyur Taluk,
Chennai-600 019. ... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Revenue Department,
Fort St.George, Chennai-600 009.
2. The District Collector,
Thiruvallur District,
Thiruvallur.
3. The Tahsildhar,
Thiruvottiyur Taluk,
Thiruvottiyur.
4. The Revenue Inspector,
Manali Revenue Firka,
Thiruvottiyur Taluk Office,
Thiruvallur District.

5. G.Sekar ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records relating to the impugned order passed by the third respondent in Na.Ka.No.1072/2019/A1, dated 06.11.2019 and to quash the same.

For petitioner : Mr.M.Raja Sekhar
For respondents : Mrs.Narmadha Sampath,
Addl. Advocate General,
assisted by Mr.K.S.Suresh,
Govt. Advocate for RR-1 to 4
No appearance for R-5

ORDER

(The Order of the Court was made by R.Subbiah, J)

The petitioner-Company has filed the above Writ Petition praying for issuance of a Writ of Certiorari to call for the records relating to the impugned order passed by the third respondent in Na.Ka.No.1072/2019/A1, dated 06.11.2019 and to quash the same.

2. It is the case of the petitioner-Company that the land(s) measuring larger extent of 23.02.5 hectares, comprised in Survey No.29/1B, situated in Village No.29, Sadayankuppam Village, Thiruvottriyur Taluk, were originally classified as "Meikkal Poramboke" lands. The first respondent, taking into consideration the plight of the general public living in Thiruvottriyur Village, who were affected due to floods and sea erosion, passed Government Order in G.O.Ms.No.1143, dated 01.12.1995, re-classified the land(s) measuring to an extent of 11.73.5 hectares as "Grama Natham" for issuance of free housing site to those people. Further, in the Village A-Register, the land(s) measuring to an extent of 23.02.5 hectares, comprised in S.No.29/1B, situated in Village No.29, Sadayankuppam Village, Thiruvottriyur Talui, were converted into "Meikkal Poramboke" to an extent of 11.73.5 hectares on 01.12.1995 itself, sub-divided the Survey Nos.29/1B to 21/1, 29/2 and 29/4. The said extent of lands, comprised in S.Nos.29/1, 29/2 and 29/4 were converted as free house-sites and the said lands were allotted to 1440 assignees on 01.12.1995 by the Tahsildar, Saidapet, with a restriction clause of "not to alienate or encumber the same for a period of 10 years from the date of allotment".

3. It is further stated by the petitioner that the then Tasildhar of Ambattur, who was having territorial jurisdiction over the property, sent a communication on 11.09.2007 to the Sub-Registrar, Thiruvottriyur not to register any document in respect of the lands comprised in old S.No.29/1 and corresponding to new S.No.29/4, situated in Sadayankuppam Village, Thiruvottriyur. One such assignee, by name Mrs.Parvathy executed a settlement deed in favour of her son, namely Dhayanithi and when the same was presented for registration, he refused to register the document, citing the communication of the Tahsildar, Ambattur. The said Parvathy filed a Writ Petition

in W.P.No.10940 of 2009, challenging the said communication and the said Writ Petition was allowed by this Court on 16.07.2009. One Valli and similarly placed assignees filed Writ Petitions in W.P.Nos.23238 to 23282 of 2009, challenging the said communication and the said Writ Petitions were allowed by this Court on 08.12.2009. Further, one Komala and 79 others have been allotted the lands to an extent of 2 cents each, by way of assignment of Patta in various plots on 01.12.1995 in old S.No.29/1 and new S.No.29/4 in No.44, Sadayankuppam Village, Ambattur Taluk, Thiruvallur District. Komala and others executed General Power of Attorney in favour of D.Vauky, by way of Registered Document Nos.734 of 2008, etc., 351 of 2009, etc. on the file of the Sub-Registrar, Royapuram.

4. It is also stated by the petitioner-Company that they had purchased the property to an extent of 2 acres and 20 cents situated in old S.No.29/1 and corresponding new S.No.29/4, Sadayankuppam Village, by way of seven registered sale deeds on the file of Sub-Registrar Office, Thiruvottiyur, through the Power Agent of the said Komala and others. After purchase of the said property, the petitioner had been storing the steel materials and is in continuous, uninterrupted possession and enjoyment of the property. The petitioner is a dealer in steel industry and storing the materials and rods in the property by fencing the property to safeguard the stored materials. The property had been assessed by the Corporation of Chennai and the property tax had been paid upto 31.03.2010.

5. While so, all of sudden, the third respondent issued a notice under Section 7(2) of the Tamil Nadu Land Encroachment Act on 28.04.2017 calling upon the petitioner for explanation on or before 12.05.2017. The petitioner submitted explanation on 11.05.2017 to the respondents 2 and 3. Thereafter, the petitioner, along with similarly placed persons, challenged the said notice dated 28.04.2017 in W.P.Nos.13089 to 13098 of 2017. This Court, by order dated 17.05.2017, directed the respondents 1 and 2 therein to consider the explanation of the respective petitioners and pass appropriate orders under Section 6 of the Tamil Nadu Land Encroachment Act, within a period of two weeks from the date of receipt of a copy of the order and till such time, the petitioners therein shall not be harassed to vacate their respective properties in their occupation.

6. Accordingly, the petitioner appeared in person before the respondents 2 and 3 and also gave statement and produced the registered sale deeds along with assignment Patta of vendors to prove the contention that the land is not Government Poramboke land as mentioned in the notice and the same belongs to the petitioner as Patta land. But the respondents 2 and 3 had not passed any order. Thereafter, the petitioner sent a detailed

representation on 18.12.2017 to the third respondent for issuance of Patta in respect of the property situated in old S.No.29/1 and new S.No.29/4, Sadayankuppam Village, Thiruvottriyur Taluk. Thereafter, the petitioner was not called for enquiry. Hence, the petitioner filed W.P.No.14985 of 2018 before this Court to direct the third respondent to consider the representation of the petitioner, dated 18.12.2017 for issuance of Patta in respect of property to an extent of 2 acres 20 cents, situated in old S.No.29/1 and new S.No.29/4, No.44 Sadayankuppam Village, Ambattur Taluk, Thiruvallur District. When the said Writ Petition came up for admission on 21.06.2018, this Court granted an order of interim injunction restraining the respondents 2 to 4 for a period of four weeks and directed the matter to be listed on 25.07.2018. The said order of this Court also restrained the petitioner from creating any third party rights in respect of the site and the superstructure in question and shall not alter the physical features till the disposal of the Writ Petition.

7. While so, all of a sudden, on 30.10.2019, the petitioner received a copy of the legal notice issued by the fifth respondent from the office of the third respondent as if the petitioner had converted the housing site to industrial area. Subsequently, the impugned order dated 06.11.2019 had been passed directing the petitioner to remove the fencing made in the property. Challenging the same, the present Writ Petition has been filed for the relief stated supra.

8. The respondents 3 and 4 have filed detailed counter affidavit denying the allegations of the petitioner. The petitioner has also filed reply affidavit.

9. Be that as it may. Disputed questions of facts cannot be gone into in this Writ Petition. This Court cannot conduct any roving enquiry under Article 226 of the Constitution of India. However, it is submitted that the respondent(s) had earlier issued notice under Section 7 of the Tamil Nadu Land Encroachment Act. Thereafter, the impugned order dated 06.11.2019 had been passed directing the petitioner to remove the fencing in the property. Therefore, the petitioner-Company can submit explanation to the respondents by putting forth all their contentions. On receipt of such explanation, the respondents shall pass appropriate orders on merits and in accordance with law, within a period of four weeks from the date of receipt of such explanation from the petitioner-Company. Till such time the orders are passed by the respondents on the said explanation, the status-quo as on today, shall be maintained by the parties.

10. With the above observations and directions, the Writ Petition is disposed of. No costs. Consequently, W.M.P. is closed.

Sd/-
Assistant Registrar (CS-IV)

// True Copy//

Sub Assistant Registrar

CS

To

1. The Secretary to Government,
State of Tamil Nadu,
Revenue Department,
Fort St. George, Chennai-600 009.
2. The District Collector,
Thiruvallur District,
Thiruvallur.
3. The Tahsildhar,
Thiruvottiyur Taluk,
Thiruvottiyur.
4. The Revenue Inspector,
Manali Revenue Firka,
Thiruvottiyur Taluk Office,
Thiruvallur District.

+1cc to Mr.M.Rajasekar, Advocate, SR.No.104359.
+1cc to Mr.N.Shivalingam, Advocate, SR.No.104291.

W.P.No.31727 of 2019

RGN (CO)
CSR: 05.03.2020

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