

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2020

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Contempt Petition No.739 of 2019
and Sub Application (OS) No.196 of 2019

M.B.Dhilip ... Petitioner

Vs.

1.Mr.Rajkumar,
The Revenue Divisional Officer,
Gudalur, The Nilgiris District.

2.Mr.Hari,
The Tahsildar,
Gudalur, The Nilgiris District.

3.Mr.Kumar,
The Revenue Inspector,
Gudalur, The Nilgiris District.

4.Mr.Balachandran,
The Village Administrative Officer,
Gudalur-I, The Nilgiris District.

... Respondents

Sub Application No.196 of 2019:

To direct the respondents to restore the building in the land bearing R.S.No.191/1(Old S.No.33/1A 1A) situated in Gudalur -I Village, The Nilrigis District measuing 0.87 Acres to its original position.

Contempt Petition filed under Section 11 of the Contempt of Courts Act to punish the respondents for contempt of Court committed by them by violating the order dated 01.02.2019 passed by this Court in W.P.No.3147 of 2019.

For Petitioner : Mr.T.P.Manoharan, Senior Counsel
for Mr.K.P.Jotheeswaran

For Respondents : Mr.A.N.Thambidurai,
Special Government Pleader

ORDER

(Order of the Court was made by **M.SATHYANARAYANAN, J.**)

The petitioner, alleging willful disobedience and non-compliance of the order dated 01.02.2019 in W.P.No.3147 of 2019, has filed this Contempt Petition.

2.The petitioner has filed the above said Writ petition for issuance of Writ of Certiorarified Mandamus calling for the records relating to the notice dated 05.01.2019 issued by the 5th respondent viz., the Revenue Inspector, Gudalur, The Nilgiris District, under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 and quash the same and consequently, forebear the respondents from interfering with his possession and enjoyment of any portion of the land bearing Rs.S.No.491/1 (Old S.No.33/1A 1A) situated in Gudalur-I Village, the Nilgiris District,

ad-measuring an extent of 0.87 acres till the final decision on his entitlement for Ryotwari Patta in the Appeals pending/provided under the Gudalur Janmam Estates (Abolition and Conversion into Ryotwari) Act, 1969 in any manner. The Writ Petition was disposed of based on the submission made by the learned Government Pleader (i/c) that the petitioner shall not be evicted without following due process of law and the Division Bench, taking note of the same, made an observation that no further directions are required in the Writ Petition and accordingly, disposed of the Writ Petition.

3.Mr.T.P.Manoharan, learned Senior Counsel assisted by Mr.K.P.Jotheeswaran learned counsel appearing for the petitioner would submit that the property in respect of the land ad-measuring 50 cents together with building bearing No.12/738F1E, 12/738F1F and 12/738F1D of Gudalur Municipality in Old Survey No.33/1A1A1C, Re-Survey No.491/1, Gudalur, The Nilgiris District, the petitioner has filed a suit in O.S.No.87 of 2017 on the file of the Principal District Munsif Court, Gudalur praying for permanent injunction restraining the defendants viz., the Collector of Nilgiris, Uthagamandalam, the Revenue Divisional Officer, Gudalur, The Tahsildar, Gudalur, the Commissioner, Gudalur Municipality, Gudalur and the Village

Administrative Officer, Gudalur-I, Gudalur, The Nilgiris, from interfering with the peaceful possession and enjoyment of the Suit Schedule Property along with the buildings thereon and an order of Status Quo is in operation.

4. It is also the specific case of the petitioner that though in the light of the submission made by the learned Government Pleader (i/c) that the petitioner will not be evicted from the property in question except under due process of law, the building/superstructure put up, has been partially demolished and therefore, the act of the respondents is in willful disobedience and non-compliance of the order and it is also pointed out by the learned Senior Counsel appearing for the petitioner that there are very many unauthorised constructions in the large extent of Janmam lands and without taking any action on that, the petitioner is selectively targeted for the reasons best known to the officials and hence, prays for passing appropriate orders punishing the respondents/contemnors for willful disobedience of the orders passed by this Court.

5. *Per contra*, Mr.A.N.Thambidurai, learned Special Government Pleader has invited the attention of this Court to the counter, dated 15.07.2019, filed by the 1st respondent and would submit that in compliance of the

order, notice under Section 7 of the Land Encroachment Act, 1905, dated 18.01.2019 was served on the petitioner and he was directed to attend personal hearing on 04.02.2019 with all evidences in respect of his claims and he also attended the enquiry on 19.02.2019 and submitted his reply and since the reply of the petitioner was found not satisfactory, notice under Section 6 of the Tamil Nadu Land Encroachment Act, 1905, was served by affixing on 20.02.2019 on the address given by the petitioner and by following due process of law, eviction was carried out on 07.03.2019 between 07:30 am and 09:30 am.

6.The learned Special Government Pleader has also brought to the knowledge of this Court, by drawing the attention of this Court to paragraph nos.9 and 13 of the counter and would submit that the petitioner claims to have purchased the lease hold rights in respect of two Jenmam lands measuring 37 cents and 50 cents respectively comprised in R.S.No.491/1 Part vide two un-registered Sale Agreements, both dated 01.09.2002, from one "Gramya Bhavan Rural Development Organisation Trust" and one K.P.Mohammed respectively and the petitioner also made a claim that both the parties had applied for Ryotwari Patta under Gudalur Jenmam Estates (Abolition and Conversion into Ryotwari) Act, 1969 before the Settlement Officer and it was rejected

and the appeal in C.M.A.No.54 of 2009 is also pending before the Appellate Tribunal viz., District Court at Udhagamandalam in The Nilgiris District under Section 12(3) of the said Act.

7.It is the further submission of the learned Special Government Pleader that the land in Old Survey No.33/1A1, Gudalur Village has been notified under the Tamil Nadu Preservation of Private Forests Act, 1949 and as per Section 3(1)(a) of the said Act, no owner of any forest shall without the previous sanction of the District Committee, sell, mortgage, lease or otherwise alienate the whole or any portion of the forest and admittedly, neither the petitioner nor the predecessors in title obtained prior permission of the Committee for executing the unregistered agreement for purchase of the said land and the petitioner is also guilty in violating the provisions of the Tamil Nadu Preservation of Private Forests Act, 1949. The 1st respondent also took a stand that payment of land revenue shall not confer any right and the eligibility or otherwise for entitlement of Ryotwari Patta is to be considered only after enquiry into the nature and history of the land and mere possession of the land will not confer any right for Ryotwari Patta and it is the own admission of the petitioner that the claim of Gramya Bhavan Rural

Development Organisation Trust and K.P.Mohammed for issuance of Ryotwari Patta has been rejected and the appeal in C.M.A.No.54 of 2009 is also pending and as such, the petitioner is not having semblance of right in respect of the land in question.

8. It is also pointed out by the learned Special Government Pleader that the petitioner is not a party to the settlement proceedings in respect of the unauthorised occupation and that he is not entitled to avail the provisions of the Gudalur Janmam Estates (Abolition and Conversion into Ryotwari) Act, 1969 and after following due process of law, he was evicted on 07.03.2019 and since the superstructure has been put up wholly unauthorisedly, without getting prior permission from the jurisdictional Town Planning Authority for Hilly Areas and as there are very many statutory provisions available, the petitioner is not expected to make any grievance against the respondents/contemnors as to the alleged non-following of the relevant statutory provisions and hence, prays for closure of this Contempt Petition.

9. In response to the said submission, the learned Senior Counsel appearing for the petitioner has invited the attention of this Court to the reply affidavit dated

06.08.2019 filed by the petitioner and would submit that till the conclusion of the appeal in C.M.A.No.54 of 2009, the respondents ought to have deferred the decision and once again reiterated the submission that due process of law has not been followed before evicting him and demolishing the superstructure put up by him and therefore, the petitioner has filed the Sub Application in Sub Appl.No.196 of 2019 to restore the building in the land bearing R.S.No.491/1 (Old S.No.33/1A1A) situated in Gualur-I Village, The Nilgiris measuring 0.87 acres to its original position and prays for appropriate orders.

10.This Court has carefully considered the rival submissions and also perused the materials placed before it.

11. The petitioner has filed the Suit in O.S.No.87 of 2017 on the file of the Principal District Munsif Court, Gudalur, the Nilgiris, praying for permanent injunction restraining the defendants, their men and agents from interfering or disturbing the peaceful possession and enjoyment of the Suit Schedule Property, details of which have been given in the earlier paragraphs. It is relevant to extract the relevant portion of the pleadings:

"1.The plaintiff submit that the suit schedule property belonged to the Janmam of Nilambur Kovilakam and Thacharakavil Manuventran

Raja avargal to Padmanbhan executed a registered Lease Deed under Document bearing No.134/1943 which has been duly registered before the appropriate authority. Subsequently the Padmanabhan and others were transferred there lease hold rights over the properties to Dr.Mathews Mar Athansias vide Document No.59/1961 registered at Sub Registrars Office at Gudalur. Thereafter the property has been transferred the legal heirs of namely Dr.Joseph Chacko, S/o Joseph represented by its Power of Attorney Agent Mr.P.A.Thomas Jacob, S/o K.K.Chacko transferred to Mr.Appu under Document No.1408/1980 of Sub Registrar's Office at Gudalur dated 27-11-1980 for an extent of 0.27 ½ Acres in Old Survey No.33/1A1A1C correlating Re-Survey No.491/1 of Gudalur Village. The suit schedule property comes under the purview of M P P F Act and accordingly then vendor has applied the Collector of Nilgiris for permission to sale the property and as per the proceedings of the Collector of Nilgiris in his R F (76) 85354/76 dated 5-11-1976 the permission was granted.

2.The plaintiff further submit that one Thiru.A.R.George, S/o A.M.Raphel, as a executed a registered sale deed in favour of Rural Development Organisation Trust Gramiya Bhawan, Aravankadu, Nilgiris represented by its Managing Trustee Thiru.Perumal, S/oChellappa Gowder under Document No.196/1988 dated 20-7-1988 of Sub Registrar's Office at Gudalur in regard to the 15 cents of agricultural land in R.S.No.491/1 of

Gudalur Village. Thereafter one Thiru Yousuf Ali, S/o Abdul Rahiman executed a transfer of Lease in favour of Thiru.K.P.Mohammed an extent of 50 cents of agricultural land in R.S.No.491/1 of Gudalur Village. Accordingly the predecessor in title Thiru.Perumal executed an unregistered sale agreement in favour of the plaintiff herein on 01-09-2002 in respect of the suit schedule property comprising in extent of 0.37 Acre (37 cents) of agricultural land in R.S.No.491/1 of Gudalur Village. Subsequent to the said purchase on the same day Thiru.K.P.Mohammed has executed an unregistered sale agreement in favour of the plaintiff for an extent of 0.50 Acre (50 cents) for land in R.S.No.491/1 part of Gudalur Village. Thus the suit schedule property has come to hands of the plaintiff as stated above. The plethora of documents clearly establish how the suit schedule property are devolved on the plaintiff herein.

3.The plaintiff further submit that the plaintiff is in exclusive and apparent possession and enjoyment over the suit schedule property with clear marketable title over the suit schedule property. Ever since the date of the purchase of the suit schedule property from the year 2002 the plaintiff has been enjoying the suit schedule property without any interference or disturbance from any quarter. While matter stands thus, the plaintiff has constructed a small house in the suit schedule property after the purchase of above referred property and put the watchman to maintain the suit schedule

property.

...

6.The plaintiff further submit that the plaintiff has constructed the building over the suit schedule property and the house tax has been assigned in the name of plaintiff under Assessment No.11490, 11970 and 11514 in respect of the premises house bearing No.12/738/F1E, 12/738/F1F and 12/738F1D of Gudalur Municipality. The 4th defendant physically inspected house premises and verified the documents of the plaintiff and after satisfying the physical verification and documents the 4th defendant assigned the house tax in the name of the plaintiff."

12.Thus, even as per the own pleadings of the petitioner as plaintiff in the Suit in O.S.No.87 of 2017, he said to have entered into an unregistered Sale Agreement for an extent of 0.50 acres in R.S.No.491/1 part of Gudalur Village and thereby, he came into possession. A perusal of the plaint averment would disclose that the petitioner, as a plaintiff, did not specifically plead that he has obtained necessary permission and statutory clearance before putting up superstructure, admittedly, in the Hill Area. The petitioner in paragraph no.- 6 of the plaint claims that since the superstructure was assessed to house tax, he is having some right.

13. In the considered opinion of this Court, the unregistered Sale Agreement will not confer any right upon the petitioner as a owner and the remedy open to the petitioner, if any, is to file a Suit for Specific Performance and admittedly, the petitioner, while filing the Suit in O.S.No.87 of 2017, did not reserve any right and is yet to avail the said remedy and even the relief of Specific Performance is clearly barred by limitation. As against the payment of property tax and house tax in respect of the superstructure, which also appears to be wholly unauthorised, it will not confer or create any semblance of right on the petitioner in respect of the superstructure in the light of the decision of the Full Bench in **Ramaraju, s/o. N.A.Subbaraja Vs. The State of Tamil Nadu, rep by its Secretary to Government, Revenue Department, Fort St.George, Chennai and others [2005 (2) CTC 741]**. The relevant portion of the said judgment is extracted hereunder:

"...

38.It is of course true that in the two counter affidavits, the municipalities have taken the stand, quite expectedly and understandably, that they have no intention to take any step for removal of any encroachment from the road or road margins without following the due procedure of law and they do not have

the intention to take steps for eviction of any person from any land not belonging to the municipalities. However, since the news item appearing in the News Papers gives the impression as if Rajapalayam Municipality intended to remove all encroachments pursuant to the order passed by the High Courts in W.P.NO.689 of 2005 and since certain misconceptions have arisen as if the Division Bench has given a blanket direction for removal of encroachment even without following due process of law, the matter is required to be clarified in the following manner:

...

(3) Payment of property tax, provisions of water connection or electricity by themselves cannot be construed as conferring any independent right, if the encroachment is otherwise unauthorised."

14. A perusal of the counter affidavit would also disclose that the land in Old Survey No.33/1A1, Gudalur Village, has been notified under the Tamil Nadu Preservation of Private Forests Act, 1949 and in the light of the provisions of Section 3(1)(a) of the said Act, no owner of any forest shall without the previous sanction of the District Committee, sell, mortgage, lease or otherwise alienate the whole or any portion of the forest and the petitioner did not obtain any permission from the Committee

for getting executed an unregistered Sale Agreement in his favour. That apart, the persons, who claim to be in possession, are yet to be issued with any Patta for the reason that their claim for Patta was rejected by the Settlement Officer and that appeal in C.M.A.No.54 of 2009 on the file of the Court of District Munsif, Udthagamandalam, The Nilgiris, against the rejection is pending. Thus, *prima facie*, the petitioner did not have any semblance of right in respect of the lands in question, which is also the subject matter of the Suit in O.S.No.87 of 2017 pending on the file of the Principal District Munsif Court, Gudalur, The Nilgiris. It is also the specific stand of the 1st respondent in paragraph nos.- 6 and 25 of the counter affidavit dated 15.07.2019 that the petitioner has been offered with reasonable opportunities in terms of the Tamil Nadu Land Encroachment Act, 1905 and eviction was carried out on 07.03.2019 and a major portion of the superstructure, which is totally unauthorised, has been demolished.

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15.In the light of the above facts and circumstances, especially, taking into consideration the conduct of the petitioner, this Court is of the considered opinion that there is no willful disobedience or violation of the order passed by this Court has been made out. Therefore, the

respondents are directed to carry out the demolition of the remaining portion of the unauthorised superstructure, as expeditiously as possible and file a Status Report before this Court.

16. In the result, the Contempt Petition is closed. For filing of Status Report with supporting documents, call on 21.02.2020. Consequently, the Sub Application is also closed.

SD/-

ASSISTANT REGISTRAR (COMM.CASES)

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//Certified to be true copy//

Dated at Madras this the day of 2020.

COURT OFFICER (O.S.)

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SMI/29/01/2020

To

1. The District & Sessions Judge,
Udhagamandalam,
Nilgiris.

2. The Principal District Munsif,
Gudalur, Nilgiris.

3. The Principal Secretary,
Forest & Environment Department,
Fort St.George, Chennai 9.