

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2020

CORAM :

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

W.P.No.13593 of 2020

and

W.M.P.Nos.16868, 16869 & 18002 of 2020

D.Kumar ... Petitioner

Vs.

1.The District Collector,
Chengalpattu.

2.The Revenue Divisional Officer,
Chengalpattu,
Chengalpattu District.

3.The Tahsildar,
Thiruporur Taluk.

4.The Block Development Officer,
Thiruporur Panchayat Union (V/P),
Thiruporur.

5.Raichand Daga ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records of the 5th respondent in Na. Ka. No.2038/ 2020/ B3 dated 07.09.2020 and quash the same.

For Petitioner : Mr.A.Ramalingam

For R1 to R4 : Mr.M.Elumalai
Additional Government

Pleader

For R5 : Mr.T.Karunakaran

O R D E R

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

The petitioner claims to be in continuous possession and enjoyment of the house site property comprised in Survey

No.106/2A, admeasuring an extent of acre 0.6 $\frac{3}{4}$ cents, situated at Egattur Village, Thiruporur Taluk, Chengalpattu District, and considering the possession and enjoyment, the local body, viz., the Village Panchayat had also issued the property tax receipt in his name for the said property. The petitioner has also raised Neem Trees, Drumstick Trees and Tamarind Trees and the superstructure put up by him has also been given electricity service connection. Since the superstructure became dilapidated, he has started constructing cement sheet slope roofed house within the ambit of the provisions of the Tamil Nadu Panchayat Building Rules, 1997, and also in order to protect his property, he has also raised compound wall along with iron gate.

2.It is the case of the petitioner that the land in Survey No.106/2A is classified as "Thoppu Poramboke" and is an unobjectionable land and therefore, there cannot be any impediment for granting assignment in terms of Revenue Standing Order No.15, and nearly, 300 persons have been issued with patta, whereas, the petitioner has not been shown with such benevolence, and in this regard, he has approached the concerned authority for grant of patta and the same is pending.

3.The petitioner would further aver that his father, who enjoyed the said land in Survey No.106/2A, had sold out 29 cents out of 9 acres to one Manika Mudhaliyar, vide registered sale deed dated 19.12.1983, and he, in turn, sold out the 29 cents in favour of the 5th respondent, vide registered sale deed dated 01.09.1995 and since he is the owner of only 29 cents within specific boundaries, he has no right in respect of balance extent of land in Survey No.106/2A. It is further averred that the private respondent, without recourse to due process of law, started interfering with the peaceful possession and enjoyment of the petitioner's land and in this regard, a police complaint has also been given by the petitioner, followed by a suit in O.S.No.36 of 2020 on the file of the Additional Sub-Court at Chengalpattu, for permanent injunction, which is pending without any interim orders. The petitioner would further aver that, all of a sudden, to his shock and surprise, the 3rd respondent has served him an enquiry notice dated 21.08.2020, calling upon him to participate in the enquiry scheduled to be conducted on 16.09.2020, and it is pursuant to the order passed in W.P.No.9362 of 2020.

4.The learned counsel appearing for the petitioner has drawn the attention of this Court to the said order, and would submit that, on a misinterpretation of the order, the impugned notice came to be issued without quoting any statutory provisions. In the light of the fact that the petitioner is in possession in respect of the land for over 15 years, due process of law ought to have been followed by the 4th respondent and therefore, prays for interference.

5.This Court has entertained this writ petition on 23.09.2020 and has granted an order of status quo. The private respondent has filed his counter affidavit with a petition to vacate the status quo and he took a stand that he is the absolute owner of the property situated at No.34, Ekkattur Madura Kilpakkam Village, Survey No.106/2A, admeasuring 29 cents, which was purchased by him from one Manika Mudhaliyar through registered sale deed bearing Document No.2413/1995 registered on the file of the Sub-Registrar's Office, Thiruporur, and he is in possession and enjoyment of the same, and in order to protect his property, he has also put up compound wall, and it is further averred that he received a phone call on 21.01.2020 from one Chinna Raja, stating that the 1st respondent, who is the writ petitioner herein, has put up a board as if the property belongs to him and trespassers will be prosecuted. The private respondent, in this regard, has also lodged a complaint on the file of the Kelambakkam Police Station and CSR No.56/2020 came to be registered, but still, no action has been taken, and further representation has also been given to the higher officials.

6.It is also the specific case of the private respondent that the writ petitioner has also put up a superstructure and also managed to get electricity service connection and in this regard, he has approached the officers of jurisdictional Electricity Board for disconnection of electricity supply. Apprehending further problem from the writ petitioner, the private respondent has also filed W.P.No.8431 of 2020 for police protection, wherein, an order came to be passed on 26.06.2020, directing the concerned official respondents therein to comply with the order of the jurisdictional Magistrate dated 06.03.2020 made in C.M.P.No.2322 of 2020 within the stipulated time.

7.It is the stand of the private respondent that, since he is having title and possession also, the act of the writ petitioner in causing disturbance is per se unsustainable and prays for vacating the interim orders.

8.Mr.M.Elumalai, learned Additional Government Pleader, appearing for the official respondents, would submit that the land in Survey No.106/2A at Egattur Village, Thiruporur Taluk, Chengalpattu District, is still classified as "Thoppu Poramboke" and it is not open to the writ petitioner to make an unilateral statement that, since it is an unobjectionable encroachment, he is entitled to patta, and the petitioner cannot claim patta as a matter of right in respect of the Government land, and he would further add that the impugned notice has been issued in accordance with Rule 9 of the Tamil Nadu Panchayats (Restriction and Control to regulate the use of Porambokes in Ryotwari Tracts) Rules, 2000, and as such, since the petitioner is having an effective

alternative remedy as provided under the said Rule, this writ petition is per se not maintainable.

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

10.A perusal of the sale deed executed by the father of the petitioner in favour of one Manika Mudhaliyar dated 19.12.1983 registered as Document No.2449/1983 on the file of the Sub-Registrar's Office, Thiruporur, would disclose that, out of 9 acres and 27 cents in Survey No.106/2A, 29 cents of land has been conveyed in favour of Manika Mudhaliyar, who in turn, has conveyed the said property in favour of the private respondent through a registered sale deed dated 01.09.1995 bearing Document No.2413/1995 on the file of the same Sub-Registrar's Office. It is the categorical stand of the learned Additional Government Pleader appearing for the official respondents that the entire land comprised in Survey No.106/2A at Egattur Village, Thiruporur Taluk, Chengalpattu District, is still classified as "Thoppu Poramboke" and since the encroachment is found to be unobjectionable, the impugned notice came to be issued rightly to the petitioner herein. Insofar as the stand taken by the writ petitioner that there are persons who have been issued with patta with the very same Survey Number, apart from the claim of the private respondent in respect of the portion of the land through registered sale deed dated 01.09.1995 is concerned, he would submit that, action against them would also follow in accordance with law, and the said submission, on instructions, is taken on file and recorded.

11.It prima facie appears that the petitioner is not sure about the extent of land in his possession. In this regard, this Court has also perused the plaint filed in O.S.No.36 of 2020 filed by the petitioner herein on the file of the Additional Sub-Court, Chengalpattu, against the 5th respondent as well as against one Pankaj. Though the petitioner, being the plaintiff, claims that he is in possession and enjoyment of the land, admeasuring 6.75 cents, situated in Survey No.106/2A, St.Thomas Road, Egattur Village, Thirupporur Taluk, Chengalpattu District, for over 15 years, the documents filed in respect of the plaint would disclose that there are electricity receipts and house tax receipts dated 28.01.2020, 13.10.2014, 18.07.2016 and 06.01.2020 respectively, which do not disclose as to the possession of the petitioner in respect of the land in question for over 15 years and that apart, in the sale deed dated 19.12.1983, executed by the father of the petitioner in favour of Manika Mudhaliyar, 29 cents of the land has been conveyed out of the total extent of 9.27 acres. This Court has also put a question to the learned counsel appearing for the petitioner during the course of arguments as to the schedule of the sale deed dated 19.12.1983 and as to the present possession in

respect of the remaining extent of the land and the learned counsel for the petitioner is unable to come out with any plausible explanation, except to seek for time.

12.It prima facie appears, even as per the averments made in the affidavit filed in support of the writ petition, as well as the representations submitted by the petitioner to the various official respondents, that the petitioner continues to be an encroacher by way of succession from his father, and since the 4th respondent has initiated action in terms of Rule 9 of the Tamil Nadu Panchayats (Restriction and Control to regulate the use of Porambores in Ryotwari Tracts) Rules, 2000, by issuing impugned notice, the petitioner cannot have any grievance as long as due process of law is being followed and admittedly, the land in question is classified as "Thoppu Poramboke" and it is always open to the 4th respondent to initiate appropriate action in accordance with law and precisely, it has been done by the 4th respondent.

13.In the considered opinion of this Court, in the light of the facts and circumstances and the reasons assigned above, there is no merit in this writ petition and it deserves dismissal and accordingly, dismissed. However, considering the circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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Assistant Registrar (CS)

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Sub Assistant Registrar

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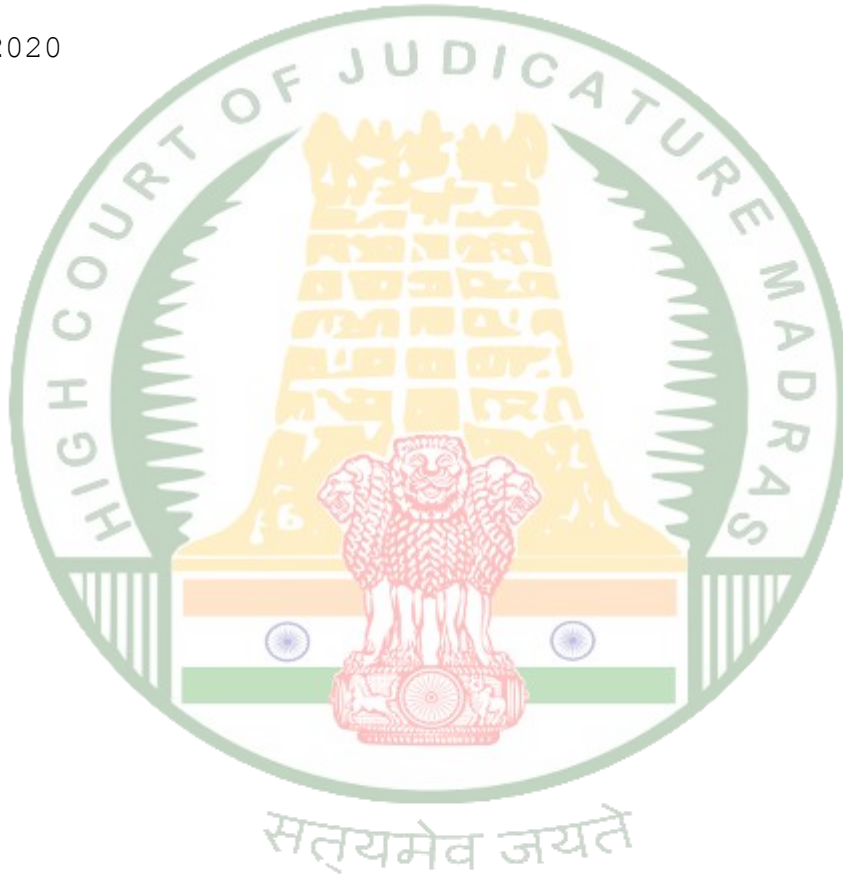
To

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LN (CO)
VS 19.12.2020



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