

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.10.2020

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MRS. JUSTICE R.HEMALATHA

WP.No.13905/2020 & WMP.No.17278/2020

K.Mohan

.. Petitioner

Versus

1. The Government of Tamil Nadu
rep.by its Secretary to the Government
Ministry of Revenue,
St George Fort, Chennai 600 009.
2. The District Collector
Thiruvallur District,
Thiruvallur.
3. The District Revenue Officer,
Thiruvallur District,
Thiruvallur.
4. The Tahsildar
Thiruvallur Taluk
Thiruvallur District,
Thiruvallur.
5. The Revenue Inspector,
Thiruvallur Taluk,
Thiruvallur District,
Thiruvallur.

.. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records pertaining to the impugned notice in Na.Ka.No.159/2020/B3 dated 18.09.2020 on the file of the 5th respondent and to quash the same and direct the 4th respondent to dispose the petitioner representation dated 12.07.2019.

For Petitioner : Mr.M.Prabakar
For RR 1 to 5 : Mr.R.Vijayakumar, AGP

ORDER

- (1) By consent, the writ petition is taken up for final disposal and is disposed of by this order. Mr.R.Vijayakumar, learned Additional Government Pleader accepts notice on behalf of the respondents.
- (2) The petitioner claims that he belongs to Hindu Adi Dravidar Scheduled Caste Community and according to him, after his ancestors, by way of succession, the petitioner continues to be in possession of the land admeasuring to an extent of 7 Acres out of the total extent of 30 acres and 41 cents comprised in S.Nos.602 to 610 of Thozhuvur Village, Tiruvallur Taluk and District and it is irrigated lands and the petitioner, along with the aid of the family members, is carrying on agricultural operations for very many years and also his sole source of livelihood.
- (3) The learned counsel for the petitioner has drawn the attention of this Court to the Village Accounts and would submit that though the land in S.Nos.602 to 610 has been classified as 'tank bed', in reality, the said lands are utilised as agricultural lands and all of a sudden, the petitioner has been issued with a Notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, by the 5th respondent and would further add that if fair and sufficient opportunity is provided to the petitioner, he may be able to sustain his defence and prays for appropriate orders.
- (4) The learned Additional Government Pleader appearing on behalf of the respondents would submit that even as per the own admission of the petitioner, the lands on which he is said to have carrying on agricultural operations, are classified as 'tank bed' as per the Village Accounts and as such, the eviction proceedings initiated by the 5th respondent is perfectly in order and prays for dismissal of this writ petition.
- (5) This Court has carefully considered the rival submissions and also perused the materials placed before it.
- (6) It is relevant to extract Sections 10 and 10B of the Tamil Nadu Land Encroachment Act, 1905:-
 ''10-Appeal- An appeal shall lie [a] to the Collector from any decision or order passed by a Tahsildar or Deputy Tahsildar under this Act, and to such officer as may be specified by the State Government in this behalf [hereinafter referred to as the appellate authority] from any decision or order passed by an authorised officer under this Act and different Appellate authorities may be specified for different classes of cases ; and
 [b] to the District Collector from any

decision or order of a Collector passed otherwise than on appeal, and

[c]to the Commissioner of Land Administration from any decision or order of a District Collector passed otherwise than on appeal.

10-B-Stay Petition:- Pending the 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.''

(7) In the light of the fact that the petitioner is having an effective alternative remedy in the form of appeal before the 2nd respondent or the delegated authority, the petitioner is granted liberty to file an Appeal under Section 10 of the Tamil Nadu Land Encroachment Act, 1905, by enclosing relevant and authenticated documents within a period of three weeks from the date of receipt of a copy of this order along with a petition for stay under Section 10-B of the said Act. The 2nd respondent or the delegated appellate authority, upon receipt of the said appeal petition along with the petition for stay from the petitioner, shall entertain the same if the papers are otherwise in order and take up the petition for stay at the first instance and give a disposal within a period of two weeks from the date of numbering of the appeal and stay petitions and till such time, respondents 4 and 5 shall defer further decision in terms of the impugned notice dated 18.09.2020 issued by the 5th respondent. It is also open to the 2nd respondent or the delegated appellate authority to dispose of the appeal itself at an early date. It is also made clear that the petitioner, till the disposal of the stay petition by the 2nd respondent or the delegated appellate authority, shall not create any third party rights in respect of the lands in question.

(8) The writ petition is disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

AP

To

1.The Secretary to the Government
Government of Tamil Nadu
Ministry of Revenue,
St George Fort, Chennai 600 009.

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Thiruvallur.

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5.The Revenue Inspector,
Thiruvallur Taluk,
Thiruvallur District,
Thiruvallur.

+2ccs to Mr.M.Prabakar, Advocate, sr no.32766

PVS (CO)
RMP (01/12/2020)

WP.No.13905/2020

सत्यमेव जयते

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