

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.10.2020

CORAM

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

WP.No.14832/2020 & WMP.No.18439/2020

P.Kalai Mani

..Petitioner

Versus

1. The District Collector
Office of the Collectorate
Thiruvavur District,
Thiruvavur.
2. The Revenue Divisional Officer
Thiruthuraipoondi Taluk
Thiruthuraipoondi,
Thiruvavur District, Thiruvavur.
3. The Tahsildar
Thiruthuraipoondi Taluk
Thiruvavur District.
4. The Special Tahsildar
Adhi Dravidar Welfare
Thiruthuraipoondi Taluk
Thiruvavur District.
- 5.St.Anthony's Matriculation Higher Secondary
School, represented by the Correspondent
Mr.Vincent Arockiaraj
Arasaladi Street, Thiruvavur Road
Thiruthuraipoondi Taluk
Thiruvavur District.

..Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records of the case relating to the Impugned Order in Na.Ka.No.780/2019/Aa4 dated 01.10.2020 passed by the 3rd respondent and to quash the same.

For Petitioner : Mr.T.Ramesh

For RR 1 to 4 : Mr.S.Kamalesh Kannan
Government Advocate

ORDER

- (1) By consent, the writ petition is taken up for final disposal and is disposed of by this order.
- (2) Mr.S.Kamalesh Kannan, learned Government Advocate accepts notice on behalf of respondents 1 to 4.
- (3) The petitioner claims to be an allottee as well as in possession of the consequential change of patta in respect of the land admeasuring to an extent of 0.00.90 in S.No.71/10, TS.No.71, Block No.6, Ward B of Thiruthuraipoondi and claims to be in possession and enjoyment of the same.
- (4) The learned counsel for the petitioner would submit that the petitioner belongs to Scheduled Caste Community and he has been given the change of patta in respect of the above cited land and ever since the above said change took place vide proceedings of the Assistant Director of Survey and Land Records, Thiruvarur, dated 29.07.2005 in Na.Ka.No.15200/Aa5/2005, he is in possession and enjoyment of the same and also put up a superstructure and resides with his family. He would further submit that all of a sudden, attempts have been made to dispossess the petitioner from the land in question under the mistaken impression that it is classified as 'Sarkar Poramboke Pathway'. The petitioner, in response to the said Notice issued under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, dated 19.09.2020, issued by the 3rd respondent, sent a detailed response dated 26.09.2020 and though it was acknowledged on 28.09.2020, the contents of the same have not been taken into consideration by the 3rd respondent who issued the impugned notice under Section 6 of the said Act dated 01.10.2020, threatening dispossession and hence, prays for appropriate protection and orders.
- (5) Per contra, the learned Government Advocate appearing on behalf of the respondents 1 to 4 would submit that since the petitioner is having an effective alternative remedy in the form of Statutory Appeal before the 1st respondent, the writ petition per se is not maintainable and prays for dismissal of the writ petition.
- (6) This Court has considered the rival submissions and also perused the materials placed before it.
- (7) 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.''

- (8) Though the petitioner has prayed for a larger relief, this Court, taking into consideration the facts and circumstances of the case and without going into the merits of the claim projected by the petitioner, either in his representation dated 26.09.2020 or in this writ petition and also in lieu of the availability of the effective alternative remedy, is of the view that the writ petition is not maintainable. However, if the petitioner is so advised, he is at liberty to avail the appeal remedy under the above cited provision with a petition for interim orders by filing it before the 1st respondent by enclosing relevant, necessary and authenticated documents within a period of two weeks from the date of receipt of a copy of this order and upon receipt of the same, the 1st respondent of the delegated Appellate Authority may entertain the Appeal Memorandum as well as the petition for stay, if the papers are otherwise in order and shall initially, take up the petition for stay and give a disposal in accordance with law within a further period of two weeks thereafter and till such time, the 3rd respondent shall defer further decision in terms of the impugned notice dated 01.10.2020. The petitioner, till the disposal of the petition for stay by the 1st respondent or the delegated Appellate Authority, shall not create any third party rights in respect of the land and superstructure in question and shall also not alter the physical features of the property. It is also open to the 1st respondent or the delegated

Appellate Authority to accord priority and dispose of the Appeal on merits and in accordance with law, at an early date.
(9)The writ petition is disposed of accordingly. No costs.
Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

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Thiruvapur District.

+1cc to the Government Pleader, Sr.No.34673

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