

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2020

CORAM :

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

W.P.No.16474 of 2020
and
W.M.P.Nos.20447 & 20449 of 2020

S.Prakash

... Petitioner

Vs.

- 1.The Additional Chief Secretary/Commissioner of
Land Administration,
Chepauk, Chennai - 600 005.
- 2.District Collector,
Salem District,
Salem.
- 3.The Commissioner of Police,
Salem City,
Salem - 636 002.
- 4.The Deputy Commissioner of Police,
Law and Order,
Salem City,
Salem - 636 002.
- 5.The Assistant Commissioner of Police,
Traffic Investigation,
Sevnapettai,
Salem - 636 002.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records relating to the order of the First Respondent dated 30.12.2019 in R.Dis. K4 / 14659 / 2018, confirming the order of the Second Respondent dated 06.10.2017 made in Roc No. 1948 / 2017 /E1 and quash the same in so far as the petitioner is concerned.

For Petitioner : Mr.Praveen S.Kumar
for M/s.Rank Associates

For Respondents : Mr.M.Elumalai
Additional Government Pleader

O R D E R

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

The petitioner claims to be the absolute owner of the landed property, admeasuring 15 cents, comprised in T.S.No.16/1, Ward AD, Block No.10, Periyeri Village, Salem Taluk, Salem District, by means of a registered sale deed, dated 02.03.2011, executed by the competent civil Court pursuant to a decree passed in O.S.No.713 of 2009.

2.The petitioner would further aver that the predecessor in title, B.V.Nagaraj, and his predecessors in title had acquired the property in the year 1958, and it became succeeded by virtue of a Will dated 20.12.1981. The said B.V.Nagaraj, who was one of the beneficiaries of the said Will, offered 15 cents for sale to the petitioner, and accordingly, the above sale deed came to be executed, and the petitioner, before doing so, has also carried out due diligence.

3.It is the submission of the learned counsel appearing for the petitioner that, prior to the sale deed, B.V.Nagaraj did not fulfill his obligations, and therefore, a suit for specific performance in O.S.No.713 of 2009 came to be filed. Consequent upon the decree to register the sale deed, the sale deed came to be executed in favour of the petitioner on 02.03.2011, and as such, he is having right, title and possession, and it was followed by joint patta issued by the jurisdictional Divisional Revenue Officer, vide proceedings dated 19.10.2015, and the name of the petitioner was also entered in the Town Survey Register maintained by the Tahsildar, Salem Taluk, Salem.

4.The erstwhile owner B.V.Nagaraj, who retained 15 cents of land with him, had filed a writ petition in W.P.No.3598 of 2017 for issuance of a writ of mandamus directing the respondents 3 to 5 herein to demolish the illegal and unauthorised construction put up by the office of the Assistant Commissioner of Police, Traffic, Sevvaipettai, Salem, and vide order dated 27.03.2017, this Court directed the 2nd respondent to cause enquiry with the aid of the relevant records and pass appropriate orders. Accordingly, enquiry was conducted, and according to the petitioner, reason was not made known to him

for calling for an enquiry. However, to the shock and surprise of the petitioner, on 07.10.2017 in the night hours, the Revenue officials, along with police, had caused trespass upon the petitioner's property, and started pulling down the construction and despite objections, illegal demolition has been carried out. In this regard, a complaint in the form of representation was also given. The petitioner also challenged the said action by filing W.P.No.26858 of 2017 and the Division Bench of this Court, vide order dated 04.04.2018, has permitted the petitioner to avail the statutory remedy and accordingly, statutory appeal was filed before the 1st respondent, who, without properly looking into the relevant documents and adhering to the principles of natural justice, has rejected the said appeal, vide impugned order dated 30.12.2019, and challenging the legality of the same, the present writ petition has been filed.

5.The learned counsel appearing for the petitioner fairly brought to the knowledge of this Court an order, dated 05.11.2020, passed in W.P.No.15106 of 2020, filed by M.Lenin Kumar, in respect of a similar issue, and points out that this Court, while dismissing the said writ petition, has granted liberty to the petitioner therein to avail common law remedy and prays for appropriate orders.

6.Mr.M.Elumalai, learned Additional Government Pleader, who accepts notice on behalf of the respondents 1 to 5, has drawn the attention of this Court to the impugned order of the 1st respondent, dated 30.12.2019, and pointed out that the said authority, on an exhaustive analysis of the factual aspects with the aid of the relevant records, found no merit in the claim of the appellants therein, namely, S.Prakash, A.M.Raju and M.Lenin Kumar/ petitioner in W.P.No.15106 of 2020, and the said writ petition filed by M.Lenin Kumar, challenging the proceedings, also ended in dismissal with certain observations, and in the light of the same, prays for dismissal of this writ petition.

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

8.On a perusal and consideration of the materials placed as well as the rival submissions, this Court is of the considered view that the points urged by the petitioner would revolve around adjudication of disputed question of facts, and therefore, the same cannot be adjudicated by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

In the result, this writ petition is dismissed, and if the petitioner is so advised, he is at liberty to avail the common law remedy before the competent forum. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

mkn

To

- 1.The Additional Chief Secretary/Commissioner of Land Administration,
Chepauk, Chennai - 600 005.
- 2.The District Collector,
Salem District,
Salem.
- 3.The Commissioner of Police,
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Salem - 636 002.
- 4.The Deputy Commissioner of Police,
Law and Order,
Salem City,
Salem - 636 002.
- 5.The Assistant Commissioner of Police,
Traffic Investigation,
Sevvapettai,
Salem - 636 002.

+1cc to M/s Rank Associates, Advocate, SR.No. 37612
+1cc to the Government Pleader, SR. No. 37761 and 37747

W.P.No.16474 of 2020

AJS (CO)
CAA (19/12/2020)