

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2020

CORAM :

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

W.P.No.15964 of 2020
and
W.M.P.No.19871 of 2020

1.G.K.Murugan

2.G.K.Nagaraj @ Nagu ... Petitioners

Vs.

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

2.The District Collector,
Thiruvallur District,
Thiruvallur.

3.The Revenue Divisional Officer,
Ponneri Division,
Thiruvallur District.

4.The Tahsildar,
Gummidipoondi Taluk,
Thiruvallur District.

5.District Library Officer,
District Commission for Libraries,
Thiruvallur District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records in respect of the impugned notice of the 4th respondent in Na.Ka.No. 857 / 2019 / AA2 dated 27.10.2020 to quash the same and forebear the respondents from interfering with petitioners' peaceful enjoyment of petition properties situated at Door No. 1, 2 and 2A V.M Koil 1st street, Gummidipoondi village comprised in S.No. 559 / A (Part) without due process of law.

For Petitioners : Mr.Y.Arul Manickam
For R2 to R5 : Mr.Kamalesh Kannan
Government Advocate

O R D E R

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

The petitioners claim to be the absolute owners of the superstructure constructed on land measuring 0.03 cents situated at Door Nos.1 &2, V.M.First Street, comprised in Survey No.559/A in Gummudipoondi Village, Gummudipoondi Taluk, Thiruvallur District, and in addition to the said property, the petitioners also claims to be the owners of a piece of land measuring around 250 sq.ft. comprised in same survey number in Gummudipoondi Village and claim to be in possession and enjoyment of the said land as well as superstructure for over 30 years. The petitioners would further add that, on earlier occasion, the Panchayat Union represented by Commissioner, filed a suit in O.S.No.1 of 1969 against 232 defendants for possession of land and it came to be dismissed on the ground that the suit filed by the plaintiff is not maintainable for the reason that it is not a Trustee and therefore, they cannot maintain a suit. It is to be noted at this juncture that the suit came to be dismissed only on technical grounds and not on merits.

2.The petitioners would state that, one Kamalammal, W/o.P.K.Nambiar, one of the defendants in the above suit, who was in possession and enjoyment of a small piece of land measuring an extent of 490 sq.ft. in S.No.559A and also the superstructure thereon, had executed a Deed of Mortgage with possession bearing Document No.2047/1969 dated 03.06.1969 on the file of the Sub-Registrar, Ponneri, and since she failed to repay and redeem the mortgage, the mother of the petitioners became the absolute owner of the property and she is in continuous possession and enjoyment of the same and that apart, the uncle of the petitioners also settled an extent of 748 sq.ft. of land lying adjacent to 490 sq.ft. of land already obtained through the above mentioned mortgage deed and thus, the mother of the petitioners became the owner of the land for an extent of 1238 sq.ft., on which, constructions have also been put up.

3.Insofar as 250 sq.ft. of land in S.No.559A is concerned, the petitioners claim that they entered into an agreement of sale with one Chandrasekar Chetty on 02.11.1981 to purchase the land measuring 250 sq.ft. In this regard, a suit for specific performance was filed in O.S.No.152 of 1996 on the file of the District Munsif Court, and a decree dated 21.04.1997 came to be passed in their favour. The petitioners also filed a suit for ad-interim injunction in O.S.No.17 of 2003 due to the

interference caused by the adjacent owner, namely, Madhavan, and the suit was dismissed, so also the appeal in A.S.No.46 of 2010.

4.The primordial grievance expressed by the petitioners by drawing the attention of this Court to the impugned notice of the 4th respondent is that the extent of alleged encroachment has not been indicated and it is only an endorsement and it cannot be construed as notice under the provisions of the Tamil Nadu Land Encroachment Act, 1905, and that apart, an earlier order, dated 31.07.2018, passed in W.P.Nos.30451 of 2014 and 2776 of 2018, has also not been complied with in letter and spirit and pray for interference.

5.Mr.Kamalesh Kannan, learned Government Advocate, accepts notice on behalf of the respondents 2 to 5, and would submit that, in terms of the earlier order, dated 27.11.2015, made in W.P.No.37877 of 2015 filed by the petitioner, survey and measurement have also been caused and having noted the fact that the petitioners are encroachers, action has been initiated under the provisions of the Tamil Nadu Land Encroachment Act, 1905, and since the petitioners are having an effective alternative remedy under Section 10 of the said Act, the writ petition per se is not maintainable and prays for dismissal of the same with exemplary costs.

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

7.A perusal of the judgment dated 07.09.2010 in O.S.No.17 of 2003 filed by the petitioner against Madhavan and three others would disclose that a categorical finding has been given in respect of the subject property to the effect that it is classified as "Sathiram Jaari Poramboke" and admittedly, the appeal preferred against the dismissal of the said suit has also ended in dismissal and thus, it prima facie appears that the petitioners are encroachers.

8.The primordial grievance expressed by the petitioners is that the impugned endorsement of the 4th respondent dated 27.10.2020 is not in accordance with the provisions of the Tamil Nadu Land Encroachment Act, 1905 and raised tenable objections also. The learned counsel for the petitioners would further add that, since the subject matter of encroachment is also subject to statutory levies and taxes, the petitioners have some right over the property.

9.In the considered opinion of this Court, if the petitioners claim to be in possession and enjoyment adverse to the interest of the real owner, the remedy open to them is the common law remedy and the said issue cannot be gone into by this

Court in a writ petition filed under Article 226 of the Constitution of India and that apart, the Full Bench of Madurai Bench of this Court, in Ramaraju v. The State of Tamil Nadu [2005 (2) CTC 741], in Para No.38(3), has observed that "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."

10. In the light of the fact and circumstances of the case, especially in the light of the fact that the petitioners are having an effective alternative remedy in the form of appeal before the 2nd respondent, this writ petition is not maintainable. If the petitioners are so advised, they are at liberty to avail the statutory appeal remedy before the 2nd respondent, along with petition for stay, and if it is filed, priority shall be accorded to the petition for stay, as well as the appeal itself shall be disposed of at the earliest.

This writ petition is dismissed subject to the above observations. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

mkn
To

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+1 CC to Mr.Y.Arul Manickam, Advocate sr 36187.

W.P.No.15964 of 2020

RLD(CO)
SP(04/12/2020)



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