

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2020

CORAM :

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

W.P.No.18575 of 2020
and
W.M.P.No.23035 of 2020

Muthu Mayeilsaamy

...Petitioner

Vs.

1.The Tahsildar,
Mettur Taluk,
Mettur - 636 401
Salem District.

2.The Revenue Divisional Officer/Sub Collector,
Mettur - 636 401
Salem District.

3.The Revenue Inspector,
Pottaneri - 636 453
Mettur Taluk,
Salem District.

4.The District Collector,
Salem District,
Salem - 636 001.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the entire records relating to the notice dated 24-08-2020 issued by the third respondent under section 7 of the Tamil Nadu Land Encroachment Act, 1905 and the final notice dated 26-11-2020 issued by the first respondent under section 6 of the Act which was served on the petitioner on 04-12-2020 and quash the same pertaining to the petitioner's house plots in S.No.341/1 measuring about 5 cents in Pudhoo Four Roads, M.Kallipatti Village, Mettur Taluk, Salem District.

For Petitioner : Mr.P.Jagadeesan
For Respondents : Mr.M.Elumalai
Additional Government Pleader

O R D E R

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

The petitioner would submit that the agricultural lands, admeasuring an extent of 10 Acres, in Survey Nos.298/2, 299/8, 300/2, 301/5 and 315/1C in M.Kallipatti Village, Mettur Taluk, Salem District, along with five residential houses therein, were acquired by the Government for formation of a Pig Iron Plant by M/s. Southern Iron and Steel Company Limited (SISCOL). The 2nd respondent, before taking possession of the lands and residential houses, has provided 204 house plot by lots in Survey Nos.334/1, 2, 3 & 4, 341/1 and 341/2 and a portion of the land in Survey No.210/4A, which was classified as "Mandaveli Poramboke". It is the specific case of the petitioner that, upon allotment of the alternative land in the form of five house plots in Survey No.334/4 'waste land' and Survey No.341/1, which was classified as "local fund road", in Plot No.80, a tiled house has been constructed, and in Plot No.81, his mother is living by putting up temporary house with iron sheet roofing. Both house sites are measuring 5 cents, and it is the specific case of the petitioner that constructions have been put up only in the house sites provided to their family and they are residing therein from the year 1995 onwards, and since the superstructure had become dilapidated, he has demolished the tiled house and started reconstructing a new terraced house in the said Plot No.80 (Door No.9/115) and the building construction has reached the roof level.

2.Mr.P.Jagadeesan, learned counsel appearing for the petitioner, would submit that, to the shock and surprise of the petitioner, the 3rd respondent has issued a notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, dated 24.08.2020, for which a detailed response was also given, and the Tahsildar, Mettur Taluk, after conducting an enquiry, has rejected the same, vide memo dated 09.11.2020, stating that the family of the petitioner is wealthy one, and it is also followed by notice under Section 6 of the Tamil Nadu Land Encroachment Act, 1905, dated 26.11.2020.

3.The learned counsel appearing for the petitioner would further submit that, admittedly, the land along with the residential houses were acquired for the establishment of a Pig Iron Plant and the petitioner was also given alternative land and constructions have been put up strictly within the boundaries of the said land and the detailed response submitted to the Tahsildar has been rejected by assigning a totally untenable reason, particularly by taking into consideration the

economic background of the petitioner, and there is a threat of demolition of the ongoing construction, and prays for appropriate orders.

4.Per contra, Mr.M.Elumalai, learned Additional Government Pleader, accepts notice on behalf of the respondents, and would submit that the petitioner is a rank encroacher and the Tahsildar, after affording opportunity of personal hearing, has rightly reached the conclusion, vide memo dated 09.11.2020, to reject the representation, and since the action is taken strictly in accordance with law, the petitioner cannot have any grievance, and prays for dismissal of the writ petition.

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

6.In the considered opinion of this Court, the ground raised by the petitioner in this writ petition would involve adjudication of disputed question of facts, and in the light of the fact that the petitioner is having an effective alternative remedy under Section 10 of the Tamil Nadu Land Encroachment Act, 1905, with provision for stay under Section 10(B) of the said Act, this writ petition, as of now, is not maintainable. The petitioner is granted liberty to file a statutory appeal under Section 10 of the Tamil Nadu Land Encroachment Act, 1905, along with petition for stay under Section 10(B) of the said Act, before the 4th respondent, by enclosing all relevant and authenticated documents, within four weeks from the date of receipt of a copy of this order/date of uploading of the order in the website, and upon receipt of the same, either the 4th respondent or the Delegated Appellate Authority, may entertain the said appeal along with petition for stay, if it is otherwise in order, and shall take up the petition for stay/interim relief at the first instance and give a disposal in accordance with law, within a further period of two weeks thereafter, and till such time, the respondents 1 and 3 shall defer further decision in terms of the impugned notices under Sections 7 and 6 of the Tamil Nadu Land Encroachment Act, 1905. It is also made clear that, if the ongoing construction being put up by the petitioner is unauthorised/in violation/deviated, it is open to the concerned authorities to take appropriate action in accordance with law.

7.The petitioner, till the disposal of the appeal by the 4th respondent or the Delegated Appellate Authority, shall not create any third party right in respect of the land and superstructure.

8.This writ petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

9.Registry is directed to return the original impugned notices to the counsel on record for the petitioner, on obtaining necessary endorsement through e-mail/in person.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mkn

To

- 1.The Tahsildar,
Mettur Taluk,
Mettur - 636 401
Salem District.
- 2.The Revenue Divisional Officer/Sub Collector,
Mettur - 636 401
Salem District.
- 3.The Revenue Inspector,
Pottaneri - 636 453
Mettur Taluk,
Salem District.
- 4.The District Collector,
Salem District,
Salem - 636 001.

Copy to

The Section Officer,
BR Section,
High Court, Madras.

+1cc to M/s.P.Jagadeesan, Advocate, S.R.No.40215

RR(CO)
KKV/23/12/2020

WEB COPY

W.P.No.18575 of 2020