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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.07.2020

CORAM :

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.P. (MD) .No.8339 of 2020

and

W.M.P. (MD) .No.7746 of 2020

R.Mani

... Petitioner

Vs.

1.The District Collector,
Tiruchirapalli
having office at
Periyamilaguparai,
Tiruchirapalli.

2.The Tahsildar,
Duraiyur,
Tiruchirapalli District.

... Respondents

Prayer: The Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records connected with the proceedings of the second respondent in Na.Ka.A2/3379/2020, dated 13.07.2020 and quash the same and forbearing the respondent from evicting the petitioner from Nathan Survey No.342/43, Pachaperumalpatti (North Village), Duraiyur Taluk, Tiruchirapalli District.

For Petitioner : Mr.A.Arumugam

For Respondents : Mr.Aayiram K.Selvakumar

Additional Government Pleader

O R D E R

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

The petitioner claims to be the owner of the landed property ad-measuring 55 sq.mtr. in Survey No.342/43 of Pachaperumalpatti, Duraiyur Taluk, Tiruchirapalli District and according to him, it is his ancestral property. The petitioner would further aver that in the Natham Settlement Scheme, the patta was not issued to him on the wrong ground that it is a vacant land and in fact, a temporary superstructure in the form of tin shed has been put up and in existence even at the time of Natham Settlement Scheme and the petitioner would further claim that the said property is in possession of his ancestors and by way of succession, he is in possession of the property for very many decades. The petitioner would also concede that the adjacent property in Survey No.132/44 belongs to him ancestrally and his house is located and it was also allotted to him through the registered partition deed dated



28.10.2018. However, the Survey No.132/44 could not be included in the partition deed, since the Sub Registrar has refused to include the same in the partition deed, on the ground that it was shown as Natham vacant land. It is also the claim of the petitioner that even subsequent to the partition deed, he is in possession of Survey No.132/43 and since the third parties interfered with the possession and enjoyment of Survey Nos.132/43 and 132/44, he has filed the suit in O.S.No.67 of 2020, against the respondents which includes the President of the Local Body viz., Pachaperumalpatti Panchayat and the same is pending. The petitioner expressed his grievance that all of a sudden, the second respondent has issued the impugned notice under Section 6 of the Tamil Nadu Land Encroachment Act, 1905, stating among other things that the petitioner has encroached upon the land in Survey No.132/43, which is classified as Natham to an extent of 0.00.40 sq.ft. and put up a tin shed and challenging the legality of the notice, he came forward to file the writ petition.

2. The learned counsel appearing for the petitioner would submit that the land in Survey No.132/43, continuously to be in possession, at the hands of the petitioner's ancestors and after their demise and by way of succession, he continuously remains in possession and it is also his right to prove and especially the fact that the land in Survey No.132/44 is also an ancestral property and without affording an opportunity whatever, the second respondent is proposing to take steps to evict the petitioner from the land in question, without resorting to the due process of law and prays for appropriate orders.

3. Mr.Aayiram K.Selvakumar, learned Additional Government Pleader accepts notice on behalf of the respondents and would submit that the petitioner, in response to the said notice, has also submitted his representation, dated 21.06.2020, and even as per his own case, the property in Survey No.132/44 has not been included in the partition deed, and that apart, even in the plaint in O.S.No.67 of 2020, which has been filed by the petitioner on the file of the Court of District Munsif, Duraiyur, against Ponnusamy and five others, there is a clear admission as to the, unauthorised possession of the petitioner in respect of the land in Survey No.132/43 and that, he has also applied for patta and as such, the claim made by the petitioner is wholly unsustainable and prays for dismissal of this writ petition, with exemplary cost.

4. This Court has carefully considered the rival submissions and perused the materials placed before this Court.

5. It is to be noted at this juncture that the petitioner is not a landless poor person and a perusal of the 'B' schedule properties registered under partition deed dated 28.10.2018, would



disclose that very many number of landed properties have been allotted to his favour. The primordial case of the petitioner is that the property in Survey No.132/43 of Pachaperumalpatti Village is in possession of his ancestors and by way of succession, he continuous to remain in possession.

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6. In the light of the said submissions, this Court has also referred to the averments made by the petitioner, who is the plaintiff in O.S.No.67 of 2020 on the file of the Court of District Munsif, Duraiyur, especially in paragraph Nos.4, 5 and 6. A perusal of the said averments would *prima facie* disclose that apart from the lands allotted by way of partition, encroachment has been caused upon certain extent of the property in Survey No.132/43. Though the learned counsel for the petitioner would vehemently contend that the said property is also an ancestral one, a perusal of the documents filed along with the plaint in O.S.No.67 of 2020 under Order 7 Rule 14 would disclose that except filing the photographs, no documents, as to the deniality in the form of 'B' Memo had been filed.

7. It has become the habit for the encroachers, to insist that the official respondents to follow the due process of law overlooking the fact, that the encroachers are also citizens and they are also expected to follow and abide by the law. As already pointed out, the petitioner is not a landless poor and despite the fact that he owns large extent of property by a registered partition deed dated 28.10.2018, still his greed has not been satisfied and wants to retain the encroached land in Survey No.132/43 of Pachaperumalpatti Village. If the petitioner is definite about his case as to the ancestral nature of the property in Survey No.132/43 of Pachaperumalpatti Village, subject to legal advice given to him, he may work out his remedy, legally before the competent forum. This Court, upon careful scrutiny of the materials and consideration of the arguments put forth by the petitioner, is of the considered view that the present writ petition lacks merits and substance and deserves dismissal. Therefore, this Writ Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Deputy Registrar (ACCOUNTS)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)



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Note : In view of the present lock down owing to COVID -19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The District Collector,
Tiruchirapalli
- 2.The Tahsildar,
Duraiyur,
Tiruchirapalli District.

+1 CC to SGP (SR-13505[F] dated 03/08/2020)

W.P. (MD) .No.8339 of 2020
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