



WEB COPY

W.P.(MD)No.12493 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.09.2020

CORAM

THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

W.P. (MD)No.12493 of 2020

and W.M.P. (MD)No.10670 of 2020

(Through Video conferencing)

Tmt.Indira

... Petitioner

-Vs-

1.The District Collector
Sivagangai District
Sivagangai.

2.The Tahsildar
Tiruppathur Taluk
Sivagangai District.

3.The Zonal Deputy Tahsildar
Tiruppathur Taluk
Sivagangai District.

...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned order passed by the third respondent dated 25.08.2020 and quash the same as illegal and consequently directing the respondents to grant patta in respect of the property in S.F.No.286/1 to an extent of 0.78.05 hectare situated at Thattati Group, Thulavoor, Thirupathur, Sivagangai District in favour of the petitioner.

For Petitioner : Mr.S.Madhavan

For Respondents : Mr.M.Muthugeethaiyan

Special Government Pleader.

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.,]

The petitioner claims to be in possession and enjoyment of the land classified as "poramboke" in S.F.No.286/1, admeasuring to an extent of 0.78.05 hectare and further according to the petitioner, she had also planted trees and the said land is also subjected to statutory levies.__The petitioner in the year 2018, applied for patta in the said land and it is still pending and however, to her shock and surprise, the third respondent has issued the impugned



notice dated 25.08.2020, under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, alleging that she is in possession of the said extent of land and after fencing it, she is in enjoyment of the same.

2. The learned counsel appearing for the petitioner would submit that the petitioner is in possession of the land in question for more than 20 years and she planted several trees and in all fairness, the respondents ought to have waited, till the first respondent considers her application for issuance of patta and he would further add that the principles of fair play and natural justice have been followed in toto and hence, prays for interference.

3. Per contra, Mr.M.Muthugeethaiyan, learned Special Government Pleader, who accepts notice on behalf of respondents, would submit that even as per the averments made in the affidavit filed in support of the writ petition, the petitioner is a rank encroacher and in the light of the fact that there is an effective alternate remedy available under Section 10 of the Tamil Nadu Land Encroachment Act, 1905, the writ petition per se is not maintainable and prays for dismissal of the same. It is also brought to the knowledge of this Court by the learned Special Government Pleader that similar contention put forth in W.P.(MD) No.12274 of 2020 has been dismissed with a liberty to avail the alternate remedy.

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

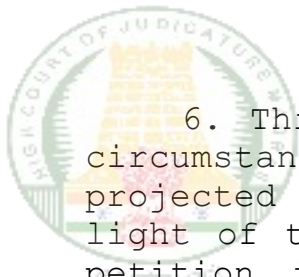
5. It is relevant to extract Section 10 and 10-B of the Tamil Nadu Land Encroachment Act, 1905:

"10. Appeal:

An appeal shall lie [a] to the Collector from any decision or order passed by a Tahsildar or Deputy-Tahsildar [or an authorised officer] under this Act, and [b] to the District Collector from any decision or order passed otherwise than on appeal, and [c] to the Board of Revenue from any decision or order of a District Collector otherwise than on appeal.

10-B. Stay pending decision in appeal or revision:

Pending 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."



6. This Court, taking into consideration the above facts and circumstances and without going into the merits of the claim projected by the petitioner, is of the considered view that in the light of the availability of effective alternate remedy, the writ petition is not maintainable. However, the petitioner, if so advised, is at liberty to avail appeal remedy under Section 10 of the Tamil Nadu Land Encroachment Act, 1905, along with a petition for stay, by enclosing relevant and authenticated documents to the appellate authority viz., the first respondent, within a period of two weeks from the date of receipt of a copy of this order and upon receipt of the same, the first respondent or the delegated authority, may entertain the said appeal petition, along with a petition for stay, if the papers are otherwise in order and take up the petition for stay at the first instance and give a disposal within a period of two weeks thereafter and till such time, the third respondent shall defer the proceedings in terms of the impugned notice. It is also open to the first respondent or the delegated authority to accord priority and give a disposal to the main appeal itself as expeditiously as possible. It is further made clear that till the disposal of the appeal by the first respondent or the delegated authority, the petitioner shall not create any third party rights in respect of the land in question.

7. In the result, this writ petition is dismissed subject to above observations/liberty.

Sd/-

Assistant Registrar (RECORDS)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

vsm

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
Sivagangai District
Sivagangai.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Tahsildar
Tiruppathur Taluk
Sivagangai District.

3.The Zonal Deputy Tahsildar
Tiruppathur Taluk
Sivagangai District.

+1 CC to SGP (SR-18114[F] dated 25/09/2020)

Order made in
W.P. (MD)No.12493 of 2020
24.09.2020

SR(CO)
KM (06.10.2020) 4P 5C