

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2021

CORAM :

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

W.P.No.975 of 2021
and
W.M.P.No.1070 of 2021

P.Balaji Petitioner
Vs.

1.The District Collector,
Salem District.

2.The Revenue Divisional Officer,
Salem, Salem District.

3.The Special Tahsildar,
Adi Dravida Welfare,
Salem, Salem District.

4.The Executive Officer,
Belur First Grade Municipality,
Belur, Salem District.

5.Mohamed Saleem Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records relevant to the impugned notice in Na.Ka.No.250/2019 dated 21/12/2020 issued by the 4th respondent herein and quash the same.

For Petitioner : Mr.T.Sundaravadanam

For R1 to R4 : Mr.V.Jayaprakash Narayanan
State Government Pleader

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

The petitioner claims to be the permanent resident at Door No.74/55, Harijana Street, Belur Post, Valapady Taluk, Salem District, and according to him, as per the recommendation of the 1st respondent, the 3rd respondent has allotted the funds for putting up construction, and accordingly, his father has put up superstructure, so also the other persons similarly placed. The petitioner would further state that the father of the 5th respondent had purchased a landed property behind the Adi-Dravida Government Tenements with separate pathway and on an earlier occasion, the brother of the 5th respondent filed W.P.No.7212 of 2016 praying for appropriate direction for removal of encroachment at Natham Theatre East Street, Belur, without disclosing the fact that there exists an Adi-Dravida Colony in the form of allotment to the beneficiaries. The 4th respondent has initiated proceedings under the provisions of the Tamil Nadu Land Encroachment Act, 1905, by issuing notices under Sections 7 and 6 of the Act, and to the shock and surprise of the petitioner, he along with others have been issued with impugned notice, dated 21.12.2020, by the 4th respondent, stating among other things that, despite the issuance of the notices under Sections 7 and 6 of the Tamil Nadu Land Encroachment Act, 1905, they did not remove the encroachment, and therefore, on 30.12.2020 at 11.00 a.m., with the aid of Police and Revenue officials, the encroachment would be demolished.

2.Learned counsel appearing for the petitioner has drawn the attention of this Court to the Typed Set of Documents, especially to the photographs, and would submit that, in the light of the fact that allotment has been made and construction has also been put up within the Government funds, and that apart, it cannot be called a road in real sense, the impugned notice issued by the 4th respondent is not at all in order, and further points out that the petitioner and other similarly placed belong to the lower stratum of society and also have poor economic background, and therefore, prays for appropriate orders.

3.Per contra, Mr.V.Jayaprakash Narayanan, learned State Government Pleader, who accepts notice on behalf of the respondents 1 to 4, would submit that the present eviction proceedings came to be initiated in compliance of the order, dated 13.12.2019, made in W.P.No.21742 of 2019 [Mohammed Saleem v. Government of Tamil Nadu, by its Secretary, Revenue Department, Secretariat, Chennai and 14 others]. Despite issuance of the notices under Sections 7 and 6 of the Tamil Nadu

Land Encroachment Act, 1905, the petitioner did not remove the encroachment, and in respect of the persons similarly placed, the same exercise has also been carried out, and further points out that, though it was open to the petitioner to make a challenge to the said notice by filing an appeal before the 1st respondent, he did not do so and as such, the present writ petition lacks merits and substance, and prays for dismissal of the same.

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

5.A perusal of the impugned notice issued by the 4th respondent which is subject matter of challenge would prima facie disclose that the notices under Sections 7 and 6 of the Tamil Nadu Land Encroachment Act, 1905, dated 01.11.2019 and 22.11.2019, came to be issued, and it also appears that no challenge has been made to the said notices. The primordial submission made by the learned counsel appearing for the petitioner is that the Street cannot be termed a "Public Street" and what was put up is only a tin-sheet, and it cannot be considered as an encroachment. In the considered opinion of this court, this issue cannot be decided by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

6.Be that as it may, if the petitioner is so advised, and if it is available to him under law, subject to law of limitation, he may be at liberty to work out his appeal remedy before the competent forum along with petition for interim relief by also enclosing all relevant and authenticated documents, and if the papers are in order, the concerned Appellate Authority may entertain the same and give a disposal to the petition for interim relief at the earliest in accordance with law.

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

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Sd/-
Assistant Registrar

/true copy/

Sub Asst. Registrar

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To

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Salem, Salem District.

3.The Special Tahsildar,
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Salem, Salem District.

4.The Executive Officer,
Belur First Grade Municipality,
Belur, Salem District.

+1 cc to Mr.T.Sundaravadanam Advocate sr3462

+1 cc to Mr.V.Jayaprakash Narayanan Advocate sr3351

+1 cc to the Government Pleader sr3018

W.P.No.975 of 2021

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