

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE T.V.THAMILSELVI

W.P.No.9361 of 2021
and W.M.P.No.9947 of 2021

E.Siddheswaran,
S/o.Elumalai,
Pulliyampatti Panchayat,
Omalur Taluk,
Salem District.

... Petitioner

Vs

1.The District Collector,
Salem District,
Salem.

2.The Tahsildar,
Omalur Taluk,
Salem District.

3.The President,
Pulliampatti Village Panchayat,
Pulliampatti Village and Post,
Omalur Taluk,
Salem District.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, Order or Direction in the nature of the writ calling for the records from the 3rd respondent relating to the Impugned Notice Ref.Nil and Dated. Nil under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 and quash the same.

For Petitioner : Mr.M.Devaraj
for Mr.R.Gunaalan

For Respondent : Mr.S.Kamalesh Kannan (for R1 to R4)
Government Advocate

ORDER

(Order of the Court was passed by N.KIRUBAKARAN, J)

The matter was heard through "Video Conference"

2. Challenging the order of the 3rd respondent relating to the Impugned Notice Ref.Nil and Dated. Nil under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, the present writ petition has been filed.

3.The petitioner, right from his father's period, is in possession and enjoyment of the property situated at Door No.63-A and 64-A, Puliampatti Village, Puliampatti Panchayat, Omalur Taluk, Salem Distirct. The petitioner has been paying property tax regularly and Chitta, Adangal extracts stand in the name of the petitioner. Before that, his father had been paying the property tax from the year 1968 onwards. Electricity Board connection has also been enjoyed by the petitioner.

4.Earlier, the petitioner had filed W.P.No.38587 of 2003 against the National Highways Authority and others prohibiting them from interfering with peaceful possession of the petitioner's property without complying with the requirements of Sections 3E, 3G and 3H of the National Highways Act 1956. In the said Writ Petition, a direction was given to conclude the acquisition proceedings and also to determine the compensation payable for the land acquired from the petitioner. The Petitioner and the Respondents had preferred Writ Appeals in W.A.Nos.789 and 1689 of 2005, respectively, which were disposed of holding that the compensation is not payable to the petitioner as he is not the owner.

5.One Mr.P.Shanmugam, filed W.P.No.19232 of 2020, seeking direction to the official respondents to remove the encroachments comprised in S.F.No.31/1, 61, 62, 63 and 64 situated at Puliampatti Village, Omalur Taluk, Salem District. In the said writ petition, the petitioner herein was also made as a party/5th respondent. This Court by an order dated 17.12.2020 disposed of the said Writ Petition, directing respondents 3 and 4 viz., Tahsildar, Omalur Taluk, Salem District and Block Development Officer, Omalur, Salem District to cause joint inspection of the property in S.F.Nos.31/1, 61, 62, 63 and 64 and to take appropriate action, if the result of the inspection reveals any encroachment.

6.Since the petitioner has not been served, the petitioner filed the modification petition in W.M.P.Nos.3690 and 3688 of 2021 in W.P.No.19232 of 2020 and the same was dismissed by order

dated 19.02.2021, holding that as per the earlier order of this Court, the inspection was ordered to be conducted and if any encroachment is there, the same has to be removed following due process of law.

7.Paragraph No.7 of the order passed in W.M.P.Nos.3690 and 3688 of 2021 in W.P.No.19232 of 2020, dated 19.02.2021, is extracted as follows:

"The judgment dated 14.07.2019 made in W.A.Nos.789 and 1689 of 2005 has recorded a categorical finding that the first respondent/writ petitioner herein is an encroacher and, at best, he may be entitled for compensation in respect of the superstructure put up by him and according to the learned counsel appearing for the petitioner, the petitioner has also received the compensation in respect of the superstructure. This Court, in the order, which is the subject-matter of the contempt, merely has made an observation that without going into the merits of the fact claim projected by the first respondent/writ petitioner, directed respondents 3 and 4 to cause joint inspection of the land in S.F.Nos.31/1, 61, 62, 63 and 64 and if the result of the inspection reveals any infraction on the part of the private respondents or any other persons, shall take immediate, necessary and appropriate steps, in accordance with law, by also adhering to the principles of natural justice and as such, there is no necessity to modify the order. If the petitioner is of the view that the order, which is the subject-matter of this modification petition, has not been complied with, in letter and spirit, he is at liberty to workout his remedy in accordance with law and not by way of this modification petition."

8.Pursuant to above said order only, the present impugned order has been issued under Section 7 of Land Encroachment Act 1905. The said order is being challenged before this Court.

9.Heard, Mr.M.Devaraj, learned counsel for Mr.R.Gunaalan, learned appearing for the petitioner and Mr.S.Kamalesh Kannan, learned Government Advocate, appearing on behalf of the respondents.

10.Mr.S.Kamalesh Kannan, learned Government Advocate, would submit that as per the earlier order of this Court, the joint inspection has been conducted and the inspection report reveals that the petitioner has encroached upon the property. Therefore, appropriate action has been taken by the department by issuing notice under Section 7 of the Encroachment Act.

11.Though the petitioner has got right to give reply, the time for filing reply has already expired. In view of that, time is extended for the petitioner to give reply, till 30.04.2021 and appropriate orders should be passed by the 3rd respondent within a period of eight weeks from the date of receipt of a reply.

12.With the above directions, this writ petition is disposed of. Till the order is passed by the 3rd respondent, the petitioner's possession and enjoyment of the property shall not be disturbed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

- 1.The District Collector,
Salem District,
Salem.
- 2.The Tahsildar,
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Salem District.
- 3.The President,
Pulliampatti Village Panchayat,
Pulliampatti Village and Post,
Omalur Taluk,
Salem District.

+lcc to Mr.R.Gunaalan, Advocate Sr.24745

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