

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2021

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

W.P.No.17876 of 2020

G.Krishnakumar

... Petitioner

Vs.

1.The District Collector,
Coimbatore.

2.The Tahsildar,
Annanur Taluk,
Coimbatore Taluk.

.... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the 2nd respondent to consider the representation dated 18.09.2019.

For Petitioner : Mr.C.Deivasigamani
For R1 and R2 : Mr.R.Vijayakumar
Additional Government Pleader

O R D E R

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

The petitioner, in the affidavit filed in support of this writ petition, would aver among other things that, as per the H.S.D. Patta No.35/67, dated 27/28.01.1958, issued in favour of the petitioner's father, the property situated at S.F.No.788/1 (wrongly stated - correct S.F.No.798/1), Old S.F.No.40 with specific boundaries, belongs to his father, wherein, a superstructure has also been put up. The father of the petitioner died on 18.04.2016, and the petitioner succeeded to the Estate of his father and claims to be in possession of the same.

2.Learned counsel appearing for the petitioner would submit that, to the shock and surprise of the petitioner, the Revenue Inspector/2nd respondent has issued a notice, dated 09.09.2019, under Section 6 of the Tamil Nadu Land Encroachment Act, 1905, for which, the petitioner has also given a detailed representation, and despite receipt and acknowledgment, no

response is forthcoming, and in the interregnum, steps are being taken to dispossess the petitioner from the land in question, and prays for appropriate orders.

3.Per contra, Mr.R.Vijayakumar, learned Additional Government Pleader, appearing on behalf of the respondents 1 and 2, would submit that, in the light of the effective alternative remedy available under Section 10 of the Tamil Nadu Land Encroachment Act, 1905, the present writ petition is not maintainable, 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.According to the petitioner, there is a concrete road in the Survey No.40, for which, there are no materials placed. This Court, after taking note of the submissions made by the learned counsel appearing for the petitioner and on going through the materials, is of the considered view that the points urged by the learned counsel appearing for the petitioner would revolve around adjudication of disputed question of facts, and as such, the prayer sought for by the petitioner cannot be granted. The petitioner is having an effective alternative remedy under Section 10 of the Tamil Nadu Land Encroachment Act, 1905, along with provisions for stay under Section 10-B of the said Act. In the light of the other remedy available, it is open to the petitioner to submit an appeal challenging the notice, dated 09.09.2019, to the 1st respondent or the Delegated Authority, along with a petition for stay, by enclosing all relevant and authenticated documents within a period of three weeks from the date of receipt of a copy of this order/uploading of this order in the website, and upon receipt of the same, the 1st respondent may entertain the appeal, and take up the petition for interim relief at the first instance and give a disposal within a further period of two weeks thereafter, and till such time, the 2nd respondent shall defer further decision in terms of the impugned notice dated 09.09.2019. It is also made clear that the petitioner, till the disposal of the appeal by the 1st respondent or the Delegated Authority, shall not create any third party rights in respect of the land and superstructure in question.

This writ petition is disposed of accordingly. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

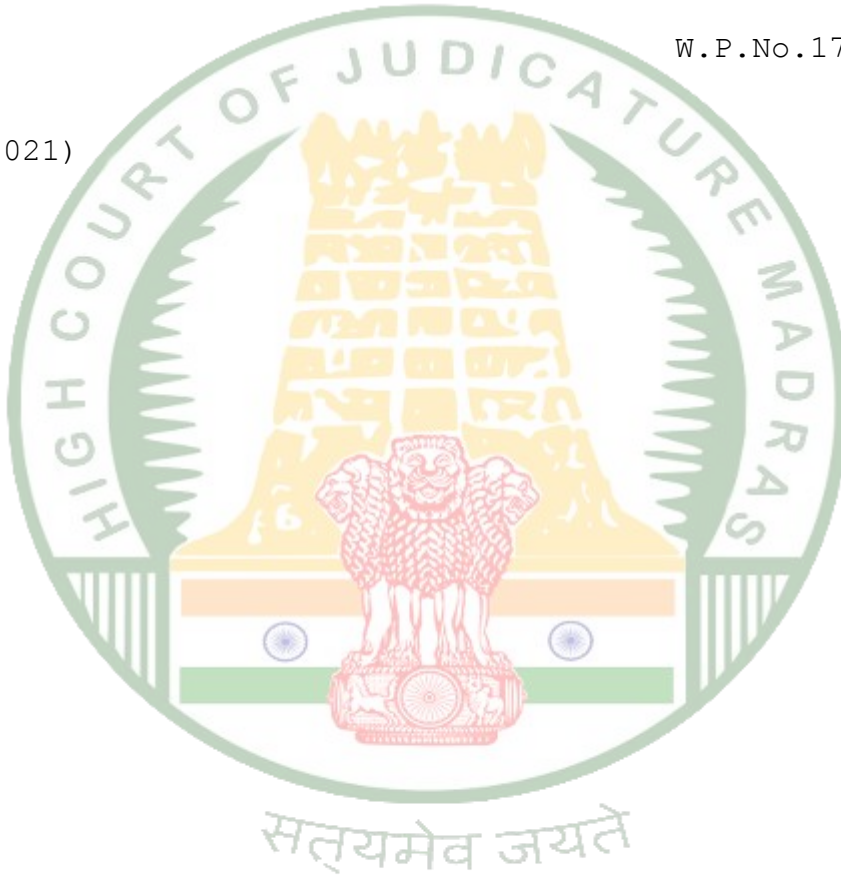
1.The District Collector,
Coimbatore.

2.The Tahsildar,
Annanur Taluk,
Coimbatore Taluk.

+1 CC to The Government Pleader sr 2762.

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UM(CO)
SP(12/02/2021)



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