



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2021

CORAM :

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
AND
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.P. NO.17818 OF 2021
AND
WMP.NO.19020 OF 2021

Chellamuthu

...Petitioner

Versus

1.The District Collector,
Perambalur District,
Perambalur.

2.The Revenue Divisional Officer,
Perambalur Division,
Perambalur District,
Perambalur.

3.The Tahsildar,
Kunnam Taluk,
Perambalur District.

4.P.Nallathambi

...Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Mandamus, forbearing the respondents from evicting the petitioner from the property comprised in Survey No.433/16 at South Thunichipaddi Village, without following the due process of law under the Tamil Nadu Land Encroachment Act 1905.

For petitioner : Mr.K.Selvarangan

For Respondents

for RR1 to 3 : Mrs.Akila Rajendran

for R4 : Mr.G.Ilamurughu



ORDER

(The Order of the Court was made by K.KALYANASUNDARAM, J)

The Writ Petition is heard through video conferencing.

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2. Heard Mr.K.Selvarangan, learned counsel appearing for the petitioner, Mrs.Akila Rajendran, learned Government Advocate appearing for the respondents 1 to 3 and Mr.G.Ilamurughu, learned counsel appearing for the fourth respondent and perused the materials available on record.

3. The petitioner has come up with this Writ Petition for issuance of a Writ of Mandamus, forbearing the respondents from evicting the petitioner from the property in Survey No.433/16 at South Thunichipaddi Village, except by following due process of law.

4. The petitioner would claim that his father-in-law Thangarasu was in possession and enjoyment of the property of the vacant land in S.No.433/22 at South Thunichipaddi Village and patta was also issued in respect of the said property. In addition, he was in possession of 4 cents of land in Survey No.433/16, which is classified as Natham Poramboke. The petitioner in the year 2007, purchased the said 4 cents of land in Survey No.433/16 and he has been in enjoyment of the same.

5. The learned counsel appearing for the petitioner Mr.K.Selvarangan, would argue that the land in Survey No.433/16 is classified as Natham Poramboke, hence the authorities have no right to initiate proceedings under the Land Encroachment Act. He further added that in W.P.No.10250 of 2021 filed by the fourth respondent, this Court, issued direction to remove the encroachment after providing reasonable opportunity to the petitioner herein, but no notice was served on him. In the said Writ Petition, the property was wrongly stated as Poramboke land.

6. Per contra, the learned Government Advocate appearing for the respondents 1 to 3 Mrs.Akila Rajendran would state that in pursuance of the order passed in W.P.No.10250 of 2021, the second respondent issued notice under Section 7 of the Act, but the petitioner refused to receive the same and also objected for affixing notice in his house. Thereafter, the petitioner himself has removed the encroachment.

7. The learned counsel appearing for the fourth respondent Mr.G.Ilamurughu would state that the petitioner has not come to the Court with clean hands. The land in Survey No.433/16 has been classified as Poramboke land in the Revenue Records, hence, the officials have rightly initiated the proceedings under the Land Encroachment Act.



8. In the instant case, there is no dispute that the petitioner is in possession and enjoyment of the land in Survey No.433/16. It is the case of the petitioner that the said land is Gramma Natham and the authorities have no right to initiate action under the Land Encroachment Act. On the other hand, the respondents would state that the land is classified as Natham Poramboke, hence, the second respondent initiated proceedings under the Land Encroachment Act.

9. The main grievance expressed by the petitioner is that the second respondent without issuing notice to the petitioner attempted to remove the encroachment. According to the petitioner, he is still in possession of the property in Survey No.433/16 and the respondents in the absence of the petitioner, had removed only the fence.

10. It is relevant to note that the First Bench of this Court, while disposing of the Writ Petition in W.P.No.10250 of 2021 has permitted the fourth respondent herein to give a fresh representation and the authorities were directed to provide reasonable opportunity to all the affected parties, including the petitioner herein. But there is no proof that the notice was served on the petitioner.

11. In the light of the above facts, we hereby direct the respondents 1 to 3 not to evict the petitioner without following due process of law. If the notice is served on the petitioner, he is entitled to put forth his case before the concerned authorities.

12. With the above observations and directions, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

pvs

To

1.The District Collector,
Perambalur District,
Perambalur.



2.The Revenue Divisional Officer,
Perambalur Division,
Perambalur District,
Perambalur.

3.The Tahsildar,
Kunnam Taluk,
Perambalur District.

+1cc to M/s.Selvarangan, Advocate SR.No.52665

+1cc to M/s.Ilamurugu, Advocate SR.No.52282

+1cc to the Government Pleader SR.No.52349

W.P. No.17818 of 2021
and WMP.No.19020 of 2021

KSM(CO)
RVM(02/11/2021)