



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
AND
THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

W.P. NO.20409 OF 2021
AND WMP.NO.21669 OF 2021

A.Kotti

.. Petitioner

Versus

1. The District Collector,
Salem District,
Salem 636001.
2. The Sub-Collector,
Mettur Taluk, Mettur.
3. The Tahsildar,
Mettur Taluk,
Mettur 636401,
Salem District.
4. The Revenue Inspector,
Pottaneri 636453,
Mettur Taluk,
Salem District.
5. S.Salapathy
Panchayat President,
M.Kalipatti Village,
Mettur Taluk,
Salem District 636453.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorari Mandamus to call for the entire records relating to the notice dated 06.08.2021 issued by the 4th respondent under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 and the final notice dated 06.09.2021 issued by the 3rd respondent in his ROC.No.2179/21/A2 under Section 6 of the Act which was served on



the petitioner on 11.09.2021 and quash the same pertaining to the land in Survey No.241 measuring about 1.54.0 Hects, unnessessed waste land (Parai) in M.Kallipatti Village, Mettur Taluk, Salem District and to restore the possession of the said land to the petitioner, which was illegally taken possession by the respondents from the petitioner on 13.09.2021

For petitioner : Mr.P.Jagadeesan

For respondents
for RR1 to 4 : Mr.L.S.M.Hasan Fizal, AGP

ORDER

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

The Writ Petition is heard through video conferencing.

2. The petitioner has come forward with this Writ Petition challenging the notice issued by the fourth respondent dated 06.09.2021 under Section 7 of the Tamil Nadu Land Encroachment Act and the order dated 06.09.2021, passed under Section 6 of the Act and for a consequential direction to restore the possession of the land in Survey No.241 measuring about 1.54.0 Hects, in M.Kallipatti Village, Mettur Taluk, Salem District.

3. It is the case of the petitioner that he owns patta lands in Survey Nos.24/2A6 and 240/2C2 in M.Kallipatti Village, Mettur Taluk, Salem District and his family has been in possession and enjoyment of the adjacent Government Poramboke land in Survey No.241 having an extent of 1.54.0 Hects for about 30 years. It is his further case that he has planted 100 coconut trees and also cultivating vegetables in the said lands. He has also put up a nursery garden, constructed a house and a small shed therein.

4. The petitioner would state that he contested for the post of Panchayat President in M.Kallipatti Village in the last local body election unsuccessfully and the fifth respondent was declared elected. Thereafter, at the influence of the fifth respondent, the fourth respondent initiated proceedings under the Land Encroachment Act and issued notice under Section 7 of the Act, the petitioner gave a detailed explanation dated 18.08.2021, but without considering the same, an order under Section 6 of the Act was passed.

5. The learned counsel appearing for the petitioner Mr.P.Jagadeesan, would urge that though the order under Section 6 of the Act came to be passed on 06.09.2021, however it was



served on the petitioner only on 11.09.2021. The official respondents, without affording an opportunity to the petitioner to prefer an appeal and even before the expiry of 7 days granted in the order dated 06.09.2021, has taken possession illegally on 13.09.2021. He further added that even though the petitioner is having a statutory remedy before the appellate authority, but before he could exhaust the appeal remedy, the official respondents have taken possession, hence, the present Writ Petition has been filed.

6. The learned Additional Government Pleader appearing for the respondents 1 to 4 Mr.L.S.M.Hasan Fizal, on instructions would state that there is no political motive in removing the encroachment. The learned Additional Government Pleader by drawing attention of this Court to the status report filed by the third respondent would submit that not only the petitioner, but also the encroachments in Survey Nos.140/1, 210/4A, 242/2, 238/5 and 240/1 have been removed. It is further stated that the official respondents have taken possession of the land and there is no illegality.

7. Heard the rival submissions and perused the materials available on record.

8. In the instant case, it cannot be disputed that the petitioner is having a statutory remedy of filing an appeal against the order passed under Section 6 of the Act. As rightly pointed out by the learned counsel appearing for the petitioner that since the official respondents have taken possession of the land from the petitioner, without providing an opportunity to file an appeal, this Writ Petition has been filed.

9. It is not disputed by the official respondents that pursuant to the order dated 06.09.2021, passed under Section 6 of the Act, the possession of the land having an extent of 1.54.0 Hects in Survey No.241 has been taken over by the respondents on 13.09.2021. We are able to find that this incident took place even before expiry of the appeal time, i.e., 30 days. It is also not disputed that the petitioner has planted coconut trees in the land in dispute and at the time of removal of the encroachers, the official respondents had demolished the construction put up by the petitioner, but no damage was caused to the coconut trees.

10. In the light of the above undisputed facts, we hereby direct the petitioner to prefer an appeal under Section 10 of the Act before the appellate authority within a period of three weeks from today. The respondents 1 to 4 shall hand over the possession of the land to the petitioner forthwith. The petitioner shall enjoy the property till the dispose of the



appeal and he shall abide the decision of the appellate authority.

11. With the above directions, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

pvs

To

1. The District Collector,
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2. The Sub-Collector,
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3. The Tahsildar,
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Mettur 636401,
Salem District.
4. The Revenue Inspector,
Pottaneri 636453,
Mettur Taluk,
Salem District.

+1cc to Mr.P.Jagadeesan, Advocate SR.NO.58692

W.P. No.20409 of 2021

EV(CO)
PM/22/11/2021