



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2021

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Petition No. 27965 of 2021
and
WMP.No.29529 of 2021

B. Asaraf Ali .. Petitioner
Versus
1. The District Collector
District Collectorate
Tirupur
2. The Tahsildar
Tirupur North
3. The Revenue Inspector
Tirupur North .. Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus directing the first respondent to pass orders on the appeal filed under Section 10 of the Tamil Nadu Land Encroachment Act, 1905 filed against the order in Appeal passed by the second respondent in Na.Ka.No.2306/2021/A3 dated 17.11.2021, confirming the eviction notice issued under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 on the file of the first respondent.

For Petitioner : Mr. I. Abrar Mohamed Abdullah
For Respondents : Mr. Alagu Gowtham
Government Advocate

ORDER

(Order of the Court was made by R.Mahadevan, J)

The petitioner has come forward with this writ petition praying to issue a Writ of Mandamus directing the first respondent to pass orders on the appeal filed under Section 10 of the Tamil Nadu Land Encroachment Act, 1905 against the notice dated 17.11.2021 issued by the second respondent confirming the eviction notice issued under section 7 of the said Act.



2. In the affidavit filed in support of the writ petition, it is stated that the petitioner is in possession of the plot in Town Survey No.15, Block No.220, Ward 'H', Thottipalayam Village, Tirupur District measuring an extent of 854 square feet for the past 40 years, where he had constructed a tiled house. According to the petitioner, he is regularly paying water and electricity consumption charges for the occupation of the plot in question. It is claimed that the petitioner has applied for patta, but it was not issued on the ground that No Objection Certificate is expected from the Tirupur Panchayat Development office. While the petitioner was anticipating to hear from the revenue department for issuance of patta, he was served with a notice dated 17.03.2016 by the Commissioner of Tirupur Panchayat Union under Section 7 of the Land Encroachment Act alleging that the plot which is in occupation of the petitioner belongs to the Government. As per the notice dated 17.03.2016, the petitioner was called upon to remove the encroachment in the Plot in question on his own, failing which, action will be taken for removal of the encroachment in accordance with the Land Encroachment Act. Pursuant to the same, he was issued with another notice dated 30.03.2016, directing him to remove and vacate the premises by 04.04.2016, failing which, appropriate proceedings would be initiated against him. Aggrieved over the same, he filed WP No. 14864 of 2016 and this Court, by order dated 10.06.2016 dismissed the said writ petition. Thereafter, on 17.11.2021, the second respondent has once again issued a notice under Section 7 of the Tamil Nadu Land Encroachment Act, which was followed by another notice dated 29.11.2021 under Section 6 of the said Act requiring the petitioner to vacate and handover the vacant possession of the land. Aggrieved by the notice dated 29.11.2021, the petitioner has filed a statutory appeal before the first respondent under Section 10 of the Tamil Nadu Land Encroachment Act along with an application for interim protection under Section 10-B of the said Act. The grievance of the petitioner is that the statutory appeal filed before the first respondent is pending without any order passed thereon, hence, the present writ petition is filed.

3. Mr. Abrar Mohamed Abdullah, learned counsel appearing for the petitioner would contend that the petitioner has filed a statutory appeal on 09.12.2021 before the first respondent along with an application for interim stay of demolition of the residential building, where he is residing along with his family. As the first respondent has not taken up the appeal for consideration, the petitioner apprehends that coercive action will be taken by the officials of the respondents pursuant to the notices issued under Sections 6 and 7 of The Tamil Nadu Land Encroachment Act. Therefore, the learned counsel prayed for issuance of appropriate direction to the first respondent to take up the statutory appeal filed under Section 10 of the Tamil



Nadu Land Encroachment Act and to dispose of the same within a time to be stipulated by this Court.

4. On the above contention, this Court heard Mr. Alagu Gowtham, learned Government Advocate, who takes notice for the respondents.

5. It is seen from the records that on 09.12.2021, the petitioner has filed a statutory appeal under Section 10 of The Tamil Nadu Land Encroachment Act along with a Petition under Section 10-B of the said Act for interim stay, against the notice dated 17.11.2021 issued by the second respondent under Section 7 of The Tamil Nadu Land Encroachment Act. The grievance of the petitioner is that the first respondent has not taken up the appeal for consideration, as a result of which, the officials of the second and third respondents are threatening the petitioner to demolish the superstructure put up by him. According to the petitioner, when the statutory appeal filed by him along with a petition for interim stay is pending before the first respondent, the action proposed to be initiated by the respondents 2 and 3 is uncalled for.

6. Having regard to the above facts and circumstances of the case, this Court, without expressing any opinion as regards the merits of the claim made by the petitioner, directs the first respondent to take up the application for stay filed by the petitioner under Section 10-B of The Tamil Nadu Land Encroachment Act, afford opportunity of hearing to him and thereafter, pass appropriate orders, on merits and in accordance with law, within a period of two weeks from the date of receipt of a copy of this order. Pending disposal of the stay application, status quo as on date shall be maintained. It is made clear that the first respondent shall also take up the statutory appeal filed under Section 10 of The Tamil Nadu Land Encroachment Act and dispose of the same as expeditiously as possible.

7. Accordingly, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

dhk



To

1. The District Collector
District Collector
Tirupur

2. The Tahsildar
Tirupur North

3. The Revenue Inspector
Tirupur North

+1cc to the Government Pleader, S.R.No.69906

WP No. 27965 of 2021

AD(CO)
SU(12/01/2022)