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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2022

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.23142 & 23143 of 2010

and

M.P.Nos.1 & 1 of 2011

and

M.P.Nos.1 & 1 of 2010

M.Palanisamy

... Petitioner in both W.P's

Vs.

1. The District Collector,
Erode District,
Erode.

2. The Tahsildar,
Perundurai Taluk,
Erode District.

3. K.C.Eswaramoorthi

...Respondents in W.P.No.23142 of 2010

1. The District Collector,
Erode District,
Erode.

2. The Tahsildar,
Perundurai Taluk,
Erode District.

...Respondents in W.P.No.23143 of 2010

Prayer in WP.No.23142 of 2010:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the order passed by the 1st respondent in and by his proceedings No.Na.Ka.48436/2010 Vu.1 dated 03.09.2010 and quash the same.

Prayer in WP.No.23143 of 2010:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the order passed by the 2nd respondent in and by his proceedings No.Na.Ka.10250/2010 A8 dated 16.09.2010 and quash the same.



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For Petitioner : M/s. V.Muthu Kamatchi in both W.P's
For Respondents
R1 & R2 : Mr.M.Murali,
Government Advocate in both W.P's

O R D E R

The petitioner has filed these writ petitions seeking quashment of the impugned order passed by the 1st respondent dated 03.09.2010 and 16.09.2010.

2. The case of the petitioner in both W.P's is that he is the absolute owner of the properties in R.S.Nos.279, 280 and 275, corresponding to Old Survey Nos.152, 159 and 160 in Attavanai Pidariyur Village, Perundurai Talauk, Erode District and the said properties were originally owned by his father through a registered sale deed. In the above three survey numbers, S.F.No.154 corresponding to New Survey No.279, 280 is exclusive cart track used by his family, right from the year 1958. While that being so, the neighbouring land owners of the petitioner, claims right over the said properties and disturbed the petitioner's family from peaceful possession and enjoyment of the said properties, following which, a suit in O.S.No.240 of 2009 was filed on the file of District Munsif-Cum-Judicial Magistrate Court, Perundurai by him and his mother for declaration of their title in respect of the above said Survey numbers and the same is still pending along with interim application for injunction. During re-survey of the said land, without issuing any notice to the petitioner, the boundary lines between the above said Survey numbers were wrongly earmarked and the same was classified to be Cart Track Poramboke.

3. While so, the 3rd respondent, who was the adjacent land owner, filed a Writ Petition in W.P.No.23142 of 2010 before this Court claiming that the property in Survey Nos.279 and 280 are Poramboke lands and to consider his representation given to the 1st respondent. This Court directed the 1st respondent to consider his representation and issued notice to the persons who are having land in that area including the petitioner. Pursuant to that order passed by this Court, the 1st respondent directed the 2nd respondent to take action against the encroachments made over the disputed properties and subsequently, the 1st respondent passed the impugned order by his proceedings No.Na.Ka.48436/2010



Vu.1 dated 03.09.2010 and No.Na.Ka.10250/10 A8 dated 16.09.2010 respectively. Challenging the same, this Writ Petition is filed.

4. The learned counsel for the petitioner submitted that as per the Tamil Nadu Land Encroachment Act, the eviction notice under Section 6 of the Act was issued, without issuing any show cause notice under Section 7 of the Act, which is mandatory. Therefore, non-issuance of show cause notice is against the mandatory requirements and also in violation of principles of natural justice. Hence, the impugned order passed by the 1st respondent is liable to be set aside.

5. The learned Government Advocate appearing for the respondents 1 and 2 submitted that counter affidavit has been filed by the respondents 1 and 2 stating that pursuant to the order of this Court dated 07.07.2010, notice was issued to the adjacent land owners of the disputed properties including the petitioner and thereafter, enquiry was conducted, pursuant to which, the impugned order was passed by the 1st respondent concluding that the disputed land in Survey Nos.279 and 280 are classified as "cart track poramboke", which is only meant for general public. However, the claim of the petitioner for exclusive right over the said disputed properties is not sustainable. Hence, he prays for dismissal of the petition.

6. From a perusal of the materials available on record, it is seen that the civil suit has not been decreed in favour of the petitioner based on the exclusive right over the disputed properties. It is noted that the 3rd respondent filed a Writ Petition in W.P.No.9596 of 2010 before this Court, in which, on 07.07.2010, this Court directed the 1st respondent to conduct adjudication between the petitioner and the aggrieved persons, based upon which, the 1st respondent conducted adjudication and concluded that the said disputed lands are classified as "cart track Poramboke", which are only meant for general public and consequently passed the impugned orders dated 03.09.2010 and 16.09.2010.

7. In view of the above facts and circumstances, though the Civil Court rejected the petitioner's application on his claim over the disputed properties, and contrary to the same, he has not produced any material before this Court for his exclusive claim over the said properties. Hence, the petitioner's right to claim over the disputed properties is not sustainable.

8. Accordingly, these Writ Petitions are dismissed. No



Costs.
closed.

Consequently, connected Miscellaneous Petitions are

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Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector,
Erode District,
Erode.
2. The Tahsildar,
Perundurai Taluk,
Erode District.

+1cc to M/s.P.T.Ramadevi, Advocate, S.R.No.11704

+1cc to the Government Pleader, S.R.No.12324

W.P.Nos.23142 & 23143 of 2010
and
M.P.Nos.1 & 1 of 2011
and
M.P.Nos.1 & 1 of 2010

GPL (CO)
SU (24/03/2022)