



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2022

WEB COPY

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THE HONOURABLE MR.JUSTICE T.RAJA

and

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

W.P.No.3228 of 2022 and WMP.No.3365/2022

S.R.Vetrivel

... Petitioner

-vs-

1. The District Collector,
District Collectorate,
Dharmapuri.

2. The Tahsildar,
Dharmapuri,
Dharmapuri District.

3. The Revenue Inspector,
Dharmapuri, Dharmapuri District.

4. P.Baskar

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the 1st respondent to pass orders on the appeal filed under Section 10 of the Tamil Nadu Land Encroachment Act, 1905 against the order in Na.Ka.No.2420/2020/A2 dated 03.01.2022 passed by the 2nd respondent confirming the eviction notice issued under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 on the file of the 1st respondent.

For Petitioner : Mr.Abrar Mohamed Abdullah

For Respondents : Mr.K.V.Sajeev Kumar, Spl.G.P.
1 to 3

ORDER

(Order of the Court was made by T.RAJA, J.)

The matter was listed to-day under the caption, 'for admission'.



2. This Writ Petition has been filed seeking for issuance of a Writ of Mandamus, directing the 1st respondent to pass orders on the appeal filed under Section 10 of the Tamil Nadu Land Encroachment Act, 1905 against the order in Na.Ka.No.2420/2020/A2 dated 03.01.2022 passed by the 2nd respondent confirming the eviction notice issued under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 on the file of the 1st respondent.

3.Learned Counsel appearing for the petitioner would submit that the petitioner is a lawful tenant in a portion of the property situated in S.No.104/2, Virupatchipuram Village, now under the Dharmapuri Municipality in Town Survey No.01/2, Block 44, Ward-C in Dharmapuri Town that belongs to Sri Pachiamman Thirukovil which also in turn belongs to Sengutha Mudaliar Community, especially of Annasagaram from time immemorial and to that effect, revenue records are also available from 1906. When it is being managed by Mr.N.Subramania Mudaliar by establishing a Trust in the name of the temple on 16.12.2019, they have also leased out a portion in the southern side of the temple land to the petitioner's father S.Ranganathan who obtained leasehold right to the land in which a shop has been constructed after obtaining due permission from Dharmapuri Municipality and also obtained water connection in the year 1989 from the Commissioner, Dharmapuri Municipality.

4.Learned Counsel for the petitioner would further submit that since the petitioner's brother-in-law Baskar out of vengeance has given a complaint against him as though he has been in encroachment, a Notice dated 27.08.2021 under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, was issued for which a detailed reply was given by the petitioner. Ignoring the same, the President, Committee for Eviction of Encroachment/Special Thasildar, Dharmapuri passed an order dated ..01.2022 in Na.Ka.No.2420/2020/A2 rejecting his objections. Aggrieved by the same, the petitioner filed an appeal before the 1st respondent, namely, District Collector, Dharmapuri, along with a stay application and they are pending consideration. Therefore, according to the learned Counsel for the petitioner, it is well settled legal position that when the petitioner is having a fair chance of success before the 1st respondent in the appeal filed by him, without even considering the pendency of the statutory appeal, no action can be taken against him. The reason being that if for any reason, the petitioner succeeds in the appeal in future and in the meanwhile, any action is taken making the appeal infructuous, he would stand remedy less. Therefore, the 1st respondent may be directed to consider the



pending appeal on merits at the earliest and in the meanwhile, no action to be taken, it is pleaded.

5. Learned Special Government Pleader taking notice for the respondents 1 to 3 also partially agreeing with the fact that the appeal filed by the petitioner under Section 10 of the Tamil Nadu Land Encroachment Act, 1905 is pending for consideration along with the Stay Application before the 1st respondent would submit that as a matter of fact, during the pendency of the appeal, no coercive steps would be taken.

6. Considering the facts and circumstances of the matter, we are of the view that when the appeal filed by the petitioner under Section 10 of the Act is pending for consideration along with the Stay Petition before the 1st respondent, the 1st respondent is hereby directed not to proceed further till the disposal of the pending appeal. The 1st respondent is also directed to consider and dispose of the appeal filed by the petitioner on merits and in accordance with law expeditiously after providing an opportunity of hearing to the petitioner.

7. With the above observation and direction, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

Tsi

To

1. The District Collector,
District Collectorate,
Dharmapuri.
2. The Tahsildar,
Dharmapuri, Dharmapuri District.
3. The Revenue Inspector,
Dharmapuri, Dharmapuri District.

+1cc to Mr.V.Sakkarapani, Advocate SR.No.9717

W.P.No.3228/2022

RK(CO)
GN(28/02/2022)