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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2022

CORAM :

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.25714 of 2022

A.Stephen .. Petitioner

Vs

1.The District Collector,
Collectorate,
Salem District-636 001.

2.The Revenue Divisional Officer,
Attur,
Salem District.

3.The Tahsildhar,
Attur Road,
Gangavalli Taluk,
Salem District – 636 113.

4.The Block Development Officer,
Gangavalli Taluk,
Salem District-636 113.

5.P.Murugan .. Respondents

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Prayer: Petition filed under Article 226 of the Constitution of India praying for a writ of mandamus forbearing the third and fourth respondents from taking eviction proceedings against the petitioner till the disposal of his appeal pending before the second respondent under Section 10 of the Tamil Nadu Land Encroachment Act, 1905.

For the Petitioner : Mr.S.Muthukrishnan

For the Respondents : Mr.P.Muthukumar
State Government Pleader
for respondent Nos.1 to 4

ORDER

(Order of the Court was made by
the Hon'ble Acting Chief Justice)

Mr.A.Stephen, son of Arokkiasamy, a resident of Kattukottai, Nagiyampatti Post, Gangavalli Taluk, Salem District, has filed the writ petition for issuance of a writ of mandamus forbearing respondents 3 and 4 from taking eviction proceedings against the petitioner till the disposal of the appeal filed under Section 10 of the Tamil Nadu Land Encroachment Act, 1905 [for brevity, "*the Act of 1905*"].

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2. Shri S.Muthukrishnan, learned counsel appearing for the petitioner, submitted that the petitioner has been residing in the land in question for several years with his family members. His son is 70% blind and his mother, who is aged about 82 years, is 100% blind. In this situation, the Special Tahsildar, Land Assignment, Attur, assigned 3 acres of land in favour of his father Arokkiyasamy in Nagiyampatti Village in S.F.No.409/2 on 18.10.1972. After the death of his father, the petitioner has been in possession and enjoyment of the land and he has also constructed a small house in S.F.No.409/2 in the year 1981 and renovated the same in the year 1995.

3. Learned counsel for the petitioner would submit that there is a 6 kilometre cart track running between Ulipuram and Kondayampatti from west to east with 15 feet width from south to north. On the southern and northern side of the said cart tract, many families are residing by constructing houses for the past several years. Till the year 2020, the fifth respondent and other

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land owners have used the existing cart track without any dispute and when nobody knows the survey number of the cart track which is the subject-matter in the writ petition, the fifth respondent filed W.P.No.24632 of 2021 alleging that he is cultivating the land in S.No.408/7 and the only access to his land is the public pathway i.e. the cart track said to be comprised in S.No.409/1 and further alleging that the petitioner herein and other persons have encroached the cart track and as a consequence, he is not able to transport the agriculture produces. The said writ petition is stated to be pending.

4. Learned counsel for the petitioner next submitted that since eviction proceedings were initiated against the petitioner by issuing notice under Section 7, followed by notice under Section 6 of the Act of 1905, an appeal has been filed before the appellate authority and till the disposal of the said appeal, the official respondents may be restrained from disturbing the possession and enjoyment of the land in question by the petitioner.

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5. Mr.P.Muthukumar, learned Government Pleader appearing for the respondents, on instructions, submitted that the land in question, for which notice under Section 6 of the Act of 1905 was issued, is a cart track. In any event, the appeal is pending before the appellate authority and if any order is passed in regard to the issuance of the notice under Section 6 of the Act of 1905, it will have a bearing while deciding the appeal.

6. We agree with the submission made by learned Government Pleader appearing for the official respondents. Therefore, without going into the merits of the claim made by the petitioner in respect of the land in question, we direct the appellate authority to dispose of the appeal preferred by the petitioner under Section 10 of the Act of 1905 within a period of six weeks from the date of receipt of a copy of this order.

7. With the above observation and direction, the writ petition is disposed of. There will be no order as to costs. Consequently,

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W.M.P.No.24761 of 2022 is closed.

(T.R., ACJ.) (D.K.K., J.)
27.09.2022

Index : Yes/No
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T.RAJA, ACJ
AND
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