

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.05.2022

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR. JUSTICE C.SARAVANAN

WP.No.13302/2022 & WMP.Nos.12577 & 12578/2022

K.Mani

.. Petitioner

Versus

1.The District Collector
Namakkal District, Namakkal.

2.The District Revenue Officer
Namakkal District, Namakkal.

3.The Tahsildar
Tiruchengode Taluk
Namakkal District.

.. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records pertaining to the impugned order, dated 07.03.2022 having reference No.Na.Ka.4958-2021-A3 on the file of the Tahsildar, Tiruchengode and quash the same.

For Petitioner : Ms.Mohanpriya

For R1 to R3 : Mr.A.Selvendran, Spl.GP

ORDER

[Order of the Court was made by S.M.SUBRAMANIAM, J.,]

- (1) The writ on hand has been instituted questioning the validity of the notice issued by the 3rd respondent dated 07.03.2022 under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 [in short 'the Act, 1905'].
- (2) The petitioner states that he is the absolute owner of the agricultural land located in S.No.296/3, Killapalayam Village, Tiruchengode Taluk, Namakkal District, measuring

an extent of 0.06 cents. Adjacent to the said land, the land in S.No.296/2 measuring an extent of 0.25 cents is the Government poramboke land classified as stone, which is being enjoyed by the petitioner.

- (3) The petitioner further states that the authorities have initiated action to evict the petitioner in respect of the said land which is with his possession. In this regard, the petitioner filed two suits in OS.No.29/2022 and OS.No.45/2022 and both the suits are pending before the competent civil Court. Thus, the petitioner contends that action during the pendency of the civil suits is impermissible and therefore, the order impugned, is to be set aside.
- (4) Per contra, Mr.A.Selvendran, learned Special Government Pleader accepting notice on behalf of the respondents objected the said contention by stating that the petitioner is an encroacher and is in possession of the Government Poramboke land. This being the factum, after conducting survey, the authority competent, issued notice under Section 6 of the Act, 1905. Therefore, the writ petition is not maintainable.
- (5) A perusal of the order impugned reveals that it is a notice issued to the petitioner asking the petitioner to submit his objections or appear in person on 14.03.2022 to place his submissions.
- (6) A writ against a show cause notice is not entertainable in a routine manner. A writ against a show cause notice may be entertained if the said notice is tainted with the allegations of mala fides or if the notice is issued by an incompetent authority having no jurisdiction ; but not otherwise. In all other circumstances, the noticee has to respond to the notice issued under the statute in order to defend his case.
- (7) That apart, the petitioner himself has stated that two civil suits instituted by him are pending before the competent Civil Court. This being the factum, the writ petition need not be entertained. It is made clear that mere institution of a suit would not be a bar for the authorities competent to initiate action against the encroachment by invoking the provisions of the Act, 1905.
- (8) It is also not a bar for the competent authorities to initiate action moreso, in the absence of any interim order. If at all the petitioner is able to establish any property right, it is to be established before the

competent Civil Court in a pending suit. Contrarily, the High Court need not entertain a writ against such notices when the suit has already been instituted and if the suit is pending and if at all any further relief is required in respect of the actions initiated by the competent authorities, it is for the parties to approach the competent Civil Court.

- (9) This being the facts and circumstances, the petitioner is at liberty to submit his objections/explanations along with the documents in order to establish his case. If at all any final decision is taken, then an appeal is also contemplated under Section 10 of the Act, 1905.
- (10) Thus, the writ petition, at this juncture, need not be entertained by this Court under Article 226 of the Constitution of India.
- (11) Accordingly, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Vacation Officer

//True Copy//

Sub Assistant Registrar

AP

To

- 1.The District Collector
Namakkal District, Namakkal.
- 2.The District Revenue Officer
Namakkal District, Namakkal.
- 3.The Tahsildar
Tiruchengode Taluk
Namakkal District.

+1cc to M/s.E.P.Senniyangiri, Advocate, S.R.No.31700

WP.No.13302/2022

SRA(CO)
SB(27/05/2022)