



WP.No.1071/2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

WP.No.1071/2023 & WMP.No.1060/2023

E.Kothandapani

.. Petitioner

Vs.

1.The Secretary to Govt., of Tamil Nadu
Highways Department, Secretariat
Chennai 600 009.

2.The Chief Engineer
Highways Department
No.76, Sardar Patel Road
Little Mount, Guindy
Chennai 600 025.

3.The District Collector
Chengalpattu District
Chengalpattu.

4.The Tahsildar
NH 32, Chitlapakkam
Tambaram West



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Chennai 600 045.
5.The Assistant Divisional Engineer
State Highways Department
Tambaram Division,
Chennai 600 042.

.. 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 relating to the letter issued by the 5th respondent in Letter No.1306/2022/2 dated 29.12.2022 issued by the 5th respondent, Assistant Divisional Engineer, Tambaram Division and quash the same.

For Petitioner	:	Mr.G.Saravana Kumar
For Respondents	:	Mr.P.Muthukumar Government Pleader

ORDER

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

- (1) Mr.P.Muthukumar, learned Government Pleader accepts notice on behalf of respondents.
- (2) This writ petition is filed challenging the impugned order passed by the 5th respondent/Assistant Divisional Engineer, Tambaram Division, dated 03.01.2023 rejecting the representation of the



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petitioner dated 29.12.2022.

- (3) Brief facts that are necessary for the disposal of this writ petition are as follows.
- (4) The petitioner states that his father by name Mr.Ekambara Naicker owned an extent of 6 cents in S.No.56/A2 [TS No.43] at Selaiyur Village, Tambaram Taluk by virtue of a Sale Deed dated 21.06.1963 and that, he is in possession and enjoyment of the property from the year 1963. It is to be noted that the petitioner, in the affidavit filed in support of this writ petition, has not given the details. However, from the plaint filed by the petitioner in the civil Suit before the learned Principal District Judge, Chengalpattu, Kancheepuram District, in OS.No.499/2022, the petitioner is claiming title by adverse possession as against the Government on the basis of his possessory right in respect of an extent of 1 cent which is described as a property abutting his patta land. From the documents filed by the petitioner himself in the typed set, it is seen that the petitioner has encroached an extent of 40 sq.m equivalent to 1 cent of land in TS.No.44 in Selaiyur Village, Tambaram Taluk. The petitioner



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though stated that he is the owner of the adjacent land measuring about 6 cents on the basis of title, it is admitted that the petitioner's claim in respect of TS.No.44 is not supported by any document of title and his claim of title is purely on the basis of alleged possession and enjoyment from the year 1963. Petitioner's case is that he has prescribed title by adverse possession as against the Government.

- (5) It is admitted that proceedings were initiated against the petitioner for removal of encroachment under the Tamil Nadu Land Encroachment Act, 1905 [hereinafter referred to as 'the Act']. As against the final order passed by the Tahsildar under Section 6 of the Act, the petitioner has preferred an Appeal before the District Collector. The Appeal was also dismissed by the District Collector filed under Section 10 of the Act, by proceedings dated 28.02.2022. Even before filing the appeal before the District Collector, the petitioner filed a writ petition before this Court in WP.No.10148/2020 and by order dated 17.08.2020, the writ petition was dismissed by this Court giving liberty to the petitioner to file an appeal. The petitioner's claim of title was not entertained and



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therefore, this Court gave liberty to the petitioner to exhaust his statutory remedy of appeal under Section 10 of the Act. In the order of the District Collector, the petitioner's claim of title was rejected and a definite finding rendered by the District Collector was that the encroachment of the petitioner is objectionable and therefore, the appeal preferred by the petitioner is liable to be dismissed. Challenging the order passed by the District Collector, the petitioner appears to have filed the appeal under Section 10 [c] of the Act before the Additional Chief Secretary / Commissioner of Land Administration, Chennai.

- (6) The main objection raised by the learned counsel for the petitioner is that a statutory appeal is now pending before the Commissioner of Land Administration and therefore, the order passed by the 5th respondent is arbitrary. The learned counsel then submitted that the suit filed by the petitioner is pending and therefore, the petitioner's possession as such, should be protected. Learned counsel for the petitioner further submitted that the 5th respondent has not considered the pendency of the appeal before the Commissioner of



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- (7) The 5th respondent has passed the impugned order rejecting the petitioner's representation dated 29.12.2022. The representation of the petitioner appears to be in the nature of postponing removal of encroachment under the pretext that the appeal is preferred by the petitioner before the Commissioner of Land Administration.
- (8) The petitioner is an encroacher and the relief prayed for by the petitioner in the civil suit itself shows that the petitioner seeks declaration of his title by adverse possession. This Court is unable to find any document to sustain the plea of adverse possession from the list of documents shown in the plaint filed by the petitioner before the Civil Court. That apart, the petitioner has suffered an order of eviction initiated by the Tahsildar concerned by following the procedure prescribed under the Act. The statutory appeal filed by the petitioner before the District Collector was also dismissed during February 2022.
- (9) Section 10 of the Tamil Nadu Land Encroachment Act, 1905, reads as follows:-



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10. Appeal. -An appeal shall lie-

(a) to the Collector from any decision or order passed by a Tahsildar or Deputy Tahsildar [xxx] under this Act, and

[(aa) to such officer as may be specified by the State Government in this behalf (hereinafter referred to as the appellate authority) from any decision or order passed by an authorised officer under this Act and different appellate authorities may be specified for different classes of cases; and]

(b) to the District Collector from any decision or order of a Collector passed otherwise than on appeal, and

(c) to the [Commissioner of Land Administration] from any decision or order of a District Collector passed otherwise than on appeal.

[Sub-section (2) was omitted by section 6 of the Tamil Nadu Land Encroachment (Amendment) Act, 1965 (Tamil Nadu Act 26 of 1965).]

- (10) Though an appeal before the District Collector as against the order of eviction is maintainable under Section 10 of the Act, no further appeal is contemplated. Section 10[c] indicates that the appeal before the Commissioner of Land Administration may lie against an order of District Collector passed otherwise than on appeal. Hence, the submission of the petitioner by showing the pendency of appeal before the Commissioner of Land Administration cannot be sustained. When the order of eviction passed under Section 6 of the Tamil Nadu Land Encroachment Act has become final, this Court is



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unable to find any reason to interfere with the order impugned in this writ petition, rejecting the representation of the petitioner.

(11) In the result, the writ petition stands **dismissed**. No costs.

Consequently, connected miscellaneous petition is closed.

[SSSRJ] [AANJ]

19.01.2023

AP

Internet : Yes



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