



WEB COPY

W.A.No.304



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.A.No.3045 of 2023
and
C.M.P.Nos.25235 and 25281 of 2023

S.Murugan

..

Appellant

...VS...

1. The Tahsildar,
K.V.Kuppam Taluk,
K.V.Kuppam,
Vellore District.
2. The Revenue Divisional Officer,
Gudiyatham,
Vellore District.
3. The District Collector,
Vellore District,
Sathuvachari,
Vellore.
4. The Village Administrative Officer,
Alanganeri Village,
K.V.Kuppam Taluk,
Vellore District.
5. The President
Alanganeri Village Panchayat,



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Alanganeri K.V.Kuppam Taluk,
Vellore District.

..

Respondents

Writ Appeal filed under Clause 15 of the Letters Patent to set aside the order dated 26.07.2023 passed in W.P.No.21300 of 2023.

For Appellant	:	Mr.N.Sampath
For Respondents	:	Mr.E.Vijay Anand (R1 to R3)

J U D G M E N T

(JUDGMENT of the Court was delivered by **S.VAIDYANATHAN, J**)

This Writ Appeal has been filed against the order dated 26.07.2023 passed in W.P.No.21300 of 2023, in dismissing the Writ Petition filed by the Appellant.

2. The Appellant is the Writ Petitioner who approached this Court by way of a Writ Petition seeking a direction to the Respondents to grant patta in his favour in respect of the property bearing S.No.185 to an extent of 4.40 acres of land out of 4.80 acres, situated at Alanganeri Village, K.V.Kuppam, Vellore District. The learned Single Judge, vide order 26.07.2023, dismissed the Writ Petition with the following observations:



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"10. Thus, the respondents are directed to resume the entire property from the hands of the encroachers and illegal occupants and utilised the land for public purposes.

11. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed."

3. Aggrieved, the present Writ Appeal has been preferred by the writ petitioner.

4. The learned counsel for the Appellant submitted that even without admitting that the Appellant is an encroacher, he cannot be evicted except under due process of law. The revenue authorities have to issue a notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 (in short 'the Act'), and a notice under Section 6 of the said Act before evicting the Appellant from the subject property, but, without considering all these, the learned Single Judge has directed the Respondents to resume the entire property from the hands of the encroachers and illegal occupants and utilize the land for public purpose, which is contrary to the Act.

5. The learned counsel appearing for the Respondents 1 to 3 submitted that the learned Single Judge has rightly dismissed the Writ Petition filed by the Appellant and therefore, the same does not warrant interference.



6. Heard both sides. Perused the records.

7. Admittedly, the property is identified as poromboke. According to the Appellant, his father served in the Indian Army and since he was landless, on the direction of the District Collector, Vellore, he was allowed to occupy the Government poramboke land and accordingly, his father constructed a house in the said land. Further, according to the appellant, his father filed a civil suit in O.S.No.463 of 1982, before the learned District Munsif, Gudiyatham, Vellore District and obtained a decree in his favour and therefore, he cannot be evicted from the property.

8. The District Munsif, Gudiyattam, Vellore has passed a Judgment and decree restraining the defendants in the suit from evicting the Appellant, except by due process of law. That apart, in the said suit, the Appellant has sought the relief of injunction and not declaration. Admittedly, the Appellant was issued with B.Memo which will not confer any title over the property in favour of the Appellant's father.

9. The learned Single Judge has rightly held that even though the Appellant's father had served in the army and occupied the land, this will not confer any title to enable his successor, viz., the Appellant/writ petitioner, to claim title over the property, more so, in Government poromboke land. That apart, the Writ Petitioner cannot seek any adverse possession in the Government property, since he has been issued with B-Memo,



acknowledging the encroachment. There is no evidence to show valid assessment in favour of the Appellant. According to the Appellant, verbal permission for assingment was granted by the authorities, but, such permission has not been established and it is not legally valid too.

10. From a reading of the Judgment and decree of the trial Court in O.S. No.463 of 1982 on the file of the District Munsif, Gudiyatham, Vellore District and the order of the learned Judge as well from the pleadings of the petitioner, it is seen that nowhere, it has been stated that the Appellant has a right over the property and when such is the fact, he has no right to continue in the property.

11. We find that there is no error apparent on the face of the record more so, in the order of the learned Single Judge. Hence, in the light of paragraph 10 extracted supra, the Respondent is expected to initiate action to remove the encroachment and to take possession of the land, by issuing notice to the Appellant.

This Writ Appeal stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

[S.V.N., J.] [K.R.S., J]
06.11.2023

Index: Yes / No
Internet: Yes / No
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