



W.P.No.26656 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2024

CORAM :

THE HON'BLE MR. JUSTICE S.S.SUNDAR
AND
THE HON'BLE MR.JUSTICE N.SENTHILKUMAR

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Mr.G.Sureshkumar

..

Petitioner

v.

1. The District Collector
Thiruvannamalai District
Thiruvannamalai

2. The Commissioner
Arani Municipality
Thiruvannamalai District

3. The Tahsildar
Arani Taluk Office
Thiruvannamalai District

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Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to Na.Ka.No.60/F1/2017 dated 22.07.2019 passed by the 2nd respondent and quash the same as illegal and arbitrary consequentially direct the respondents not to disturb petitioner's peaceful possession and enjoyment of the same.



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For Petitioner :: Mr.B.S.Ramesh
For Respondents :: Mr.M.Muthusamy
Government Advocate for R1 & R3
Mr.P.Srinivas for R2

ORDER

(Order of the Court was made by S.S.SUNDAR,J.)

This writ petition is filed challenging the impugned order issued by the second respondent directing the petitioner to remove the encroachment measuring an extent of 1151 square feet in Town Survey No.77 in the junction of two streets within the jurisdiction of the second respondent.

2. One of the grounds raised by the petitioner is that the impugned order of the second respondent is in violation of the principles of natural justice, as the second respondent, while directing the petitioner to remove the encroachment, has not given any show cause notice or a reasonable opportunity of hearing to the petitioner before passing such order.

3. The learned counsel appearing for the petitioner has submitted that



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the petitioner is residing in the property for several years and that at the instance of Government officials, the impugned order has been served upon the petitioner without an enquiry.

4. Per contra, Mr.P.Srinivas, learned counsel appearing for the local body submitted that despite repeated notices being served on the petitioner, the petitioner has not removed the encroachment.

5. Except stating that the petitioner is in enjoyment of the property, the petitioner has not laid any claim of title. However, the petitioner has stated that an application for issuance of patta in his favour is pending consideration. Though it is pointed out that a suit is filed by the petitioner for permanent injunction restraining the local body not to disturb the possession of the writ petitioner, from the affidavit filed in support of the interlocutory application for grant of interim injunction, the petitioner has admitted that the property belongs to the local body. However, it is his further case that he is in possession of the property and on that basis had applied for grant of patta before the Tahsildar, Arani. From the admission



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made by the petitioner in the affidavit filed in support of the petition that the land in which he has put up construction is a government poramboke and the stand taken by the petitioner in the affidavit filed in support of the interlocutory application in I.A.No.301 of 2017 in O.S.No.126 of 2017 pending before the District Munsif Court, Arani, this Court finds that the petitioner has no legitimate claim for title and therefore the petitioner's possession is unauthorized. Even assuming that the petitioner is in enjoyment of the public land, the petitioner has to be evicted only by due process of law either under the Tamil Nadu Land Encroachment Act, 1905 or under the Tamil Nadu Urban Local Bodies Act, 1998, and the petitioner is entitled to a show cause notice before removal of encroachment.

6. Considering the facts that are narrated before this Court by the petitioner as well the official respondents, this Court is inclined to dispose of this writ petition in the following lines:-

- (i) The third respondent-Tahsildar is directed to survey the property in which the petitioner's house is located and demarcate the land with reference to the revenue records whether the land in which the



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petitioner has put up construction is a government poramboke or a property which vest with the second respondent.

- (ii) The Tahsildar shall conduct the survey after issuing due notice to the petitioner as well the second respondent.
- (iii) The Tahsildar shall draw the report after inspection and enquiry about the ownership of the property as well its usage as a street or for any public purpose because of which the property vest with the local body.
- (iv) Depending upon the outcome of inspection, either the Tahsildar or the Commissioner of Arani Municipality shall initiate action for removal of encroachment, either under the Tamil Nadu Land Encroachment Act or under the Tamil Nadu Urban Local Bodies Act, respectively, after following the procedure in accordance with law, within a period of six weeks from the date of drawal of the report.
- (v) It is needless to state that the petitioner shall be issued with a show cause notice before passing the order of eviction or a direction to remove the encroachment as required either under Section 7 of the Tamil Nadu Land Encroachment Act or under Section 128 of the Tamil Nadu Local Bodies Act.

Consequently, W.M.P.No.26046 of 2019 is closed. In view of the above order, W.M.P.No.28532 of 2019 is closed as unnecessary. No order as to costs.



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(S.S.S.R.,J.) (N.S.,J.)

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Index : yes/no

Neutral citation : yes/no

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