

(2011) 04 MAD CK 0323

In the Madras High Court

Case No : Writ Petition No. 15283 of 2010 and M.P. No's. 1, 2 and 4 of 2010

G. Annadurai

APPELLANT

Vs

The Chairman Mathipeettukuzhu Tamil Nadu Legislative
Assembly and Others

RESPONDENT

Date of Decision : 25-04-2011

Acts Referred:

Tamil Nadu Land Encroachment Act, 1905 — Section 6, 7

Citation : (2011) 04 MAD CK 0323

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : N. Selvaraju, for the Appellant; Lita Srinivasan, Government
Advocate For R1 to R5 and V. Bhiman, for R7, for the Respondent

Final Decision : Dismissed

Judgement

T. Raja, J.—The Petitioner-G. Annadurai has filed the present Writ Petition seeking for the issuance of a Writ of Certiorari, calling for the records of the Respondents 3 and 4 culminating in the impugned order Ref. Na. Ka.14605/2008/A2 dated nil.07.2010 on the file of the fourth Respondent, quash the same insofar as the Petitioner is concerned and consequently direct the Respondents to issue patta to the Petitioner in respect of the land under his occupation and enjoyment in Survey No. 253/2 Hanuman Colony, Injambakkam Village, Sholinganallur Taluk, Kanchipuram District.

2. Learned Counsel appearing for the Petitioner submits that the Petitioner is a poor and illiterate person residing in the property comprised in Survey No. 253/2, Injambakkam Village, Tambaram Taluk, now Sholinganallur Taluk, for more than 40 years. Not only the Petitioner, along with him, several other persons are in enjoyment and possession of 1.5 cents of land each by constructing small house therein, that most of the residents except 3 families are hailing from schedule caste and that they have been paying taxes to the revenue department house tax and water tax to the panchayat and further they have

been provided with basic amenities such as electricity, voter I.D., Street lights, water etc. That apart, the Petitioner was also issued with B memo by the revenue authorities and that is a proof of collection of revenue tax from the Petitioner. While so, the Petitioner has taken steps to grant of patta in respect of the land under occupation from the year 2000. On 02.11.2007, the Petitioner has also given representation to the second Respondent-District Collector, Member of Legislative Assembly, Tambaram and Tahsildar claiming patta in respect of the land under the Petitioner's possession and enjoyment, but, there is no response whatsoever came from the Respondents. Subsequently, on 20.06.2008, the Petitioner and other residents applied to the Collector seeking individual patta in respect of the land under his possession and enjoyment on the basis of the so called popular scheme of the Chief Minister announced on 29.12.2006 based on the G.O. Ms. No. 168, Revenue Department, dated 27.03.2000, subsequently, the District Collector in his proceedings passed in Na. Ka.33039/2008/No. 1, dated 08.07.2008 directed the Tahsildar Tambaram to take necessary action on their application and called for report with regard to the action taken on the application.

3. When the matter stands thus, the Tahsildar, Tambaram without considering the representation of the Petitioner and other residents caused a notice u/s 7 of the Tamil Nadu Land Encroachment Act, 1905 (hereinafter referred to as "the Act"), as the Revenue Inspector has no authority to issue such a notice to the Petitioner. He added further that the Petitioner has also submitted his objections as against the proposed summary proceedings initiated to evict the Petitioner and without considering the objections raised by the Petitioner that he has been living there for more than several decades, the impugned order dated 22.09.2008 passed u/s 6 of the Act, has given threat of eviction at any movement in the hands of the Respondents 4 and 5, hence, prayed for allowing the Writ Petition.

4. Learned Counsel appearing for the Petitioner further submits that it is an admitted case that the Petitioner is residing in the said place for more than several decades, the B memo issued along with the Voter I.D. Card and Electricity receipts are all standing testimonials to prove the case of the Petitioner's long possession and enjoyment in the said place. In view of the same, since the Government of Tamil Nadu has issued a G.O. Ms. No. 168, Revenue Department, dated 27.03.2000, the Petitioner is entitled to get patta. Therefore, he further prayed that if a direction is given on the basis of the G.O. Ms. No. 168, Revenue Department, dated 27.03.2000, the Respondents would consider and pass orders for grant of patta.

5. Strongly opposing the said prayer, the learned Government Advocate appearing for the Respondents 1 to 5 urged that the case of the Petitioner was rightly considered even in the year 2008 itself by issuing not only notice u/s 7 of the Act dated 05.07.2008, yet another notice was issued u/s 6 of the Act dated 22.09.2008, thereafter, 90 days time was also given as against the 7 days time

in case of Section 7 notice. Only thereafter, a decision was taken to evict the Petitioner on 14.07.2010 which is after a long gap of 2 years from the issue of notice u/s 7 of the Act. Further the demand for grant of patta is not sustainable since the Petitioner has blocked the public road which is being as a cart-tract. Therefore, nothing further is left out for any more consideration and on that basis strongly objected the claim of the Petitioner.

6. When the counter affidavit filed by the fourth Respondent-Tahsildar, Sholinganallur, clearly shows that the Petitioner is having his house erected in the cart-tract that is belonging to the panchayat poramboke, the Revenue Department has got full control and supervision on the poramboke land which is coming under their jurisdiction. Therefore, they entitled to take action in accordance with law. On that basis, they have also rightly issued notices u/s 7 and 6 of the Act. Though the notice u/s 7 of the Act was issued on 05.07.2008 and followed by another notice issued u/s 6 of the Act on 22.09.2008, more than two years have gone up. In the meanwhile, though the Petitioner has moved an application before the Revenue Authorities seeking benefit of G.O. Ms. No. 168, Revenue Department, dated 27.03.2000, learned Government Advocate appearing for the Respondents 1 to 5 on instruction submitted that the Petitioner is not entitled to get the benefit of issuance of patta since they are occupying the cart-tract which is a road poramboke.

7. Though the learned Counsel appearing for the Petitioner has brought to the notice of this Court, a document issued by the Village Panchayat President showing that there is no encroachment in the poramboke land, this Court is not able to accept such a letter issued by the Village Panchayat President, for the simple reason that the fourth Respondent-Tahsildar herein has clearly mentioned that the Petitioner is occupying a road poramboke. Out of total area of 0.19.0 Ares of the poramboke, the encroachers have occupied 0.12.0 Ares, leaving a 0.07.0 Ares zigzag road and thereby the entire original road has been defaced and thus committed trespass into a public cart-tract which is highly an objectionable one. Therefore, they have already initiated action u/s 7 and 6 of the Act, hence, I do not find any merit in the present Writ Petition, accordingly, the same is dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.