
(2013) 12 MAD CK 0066

In the Madras High Court

Case No : Writ Petition No. 33733 of 2012 and M.P. No. 1 of 2012

M. Paul Ammal

APPELLANT

Vs

District Collector and Others

RESPONDENT

Date of Decision : 06-12-2013

Acts Referred:

Citation : (2013) 12 MAD CK 0066

Hon'ble Judges : T.S. Sivagnanam, J;Chitra Venkataraman, J

Bench : Division Bench

Advocate : R. Thiagarajan for Mr. M. Thamizhavel, for the Appellant; A.L. Somayaji for Mr. R. Ravichandran, AGP, for the Respondent

Judgement

Chitra Venkataraman, J.—The petitioner herein claims herself to be the assignee of the property situated in Survey No. 167 at Kilambakkam village, Urapakkam Panchayat, measuring an extent of 3 cents by the proceedings of the Deputy Tahsildar, Chengalpattu on 5.3.1993. Consequent to the assignment of the land, the petitioner had constructed a thatched house and after removal of thatched house, a compound wall was constructed surrounding his land. The contention of the petitioner is that she had been paying necessary statutory dues on the said property and she had been in possession of the property since the date of transfer. The petitioner contends that the first respondent is making a railway fly over construction work in Kilambakkam village. The petitioner's land is situated near the railway construction work. Without issuing any notice to the petitioner, the construction work is going on. This is the position as regards the other residents living nearby, with the result the petitioner filed W.P. No. 1168 of 2012 seeking a writ of mandamus to forbear the Secretary to Government of Tamil Nadu, High Ways Department, the District Collector, Kancheepuram District and the Special Tahsildar, High Ways Rural Development Corporation, from evicting or dispossessing the petitioner or demolishing the building except through due process of law under the provisions of Tamil Nadu High Ways Act 34 of 2002. By Order dated 7.3.2012, this Court disposed of the writ petition directing the

respondents to pass final orders after considering the objections made by the petitioner and till final orders are passed the respondents were directed not to interfere with the possession of the petitioner. It seems that subsequent thereto a series of writ petitions were filed by similarly placed persons as against the orders of eviction made by the 2nd respondent. In W.P. Nos. 33650, 33719, 33733, 33760 and 33791 of 2012, by Order dated 22.1.2013, a Division Bench of this Court extended the stay granted on 17.12.2012. Those writ petitions are also subject matter of hearing along with this writ petition before us. It is seen from the averments in the writ petition that the 4th respondent issued a show cause notice u/s 7 of the Tamil Nadu Land encroachment Act, 1905 on 5.9.2012 calling upon the petitioner to show cause as to why the petitioner should not be evicted from the premises. The petitioner replied on 22.9.2012 placing reliance on the assignment made on 5.3.1993 by the Deputy Tahsildar, Chengalpattu through the assignment order. The petitioner denied the allegation of encroachment contained in the notice and requested the authorities to verify the documents such as house property tax receipt, family card, E.B. card and pass orders thereon. Thereafter, the second respondent Tahsildar, Chengalpattu issued the order dated 3.12.2012, wherein the second respondent considered the representation made by the petitioner and held that the claim of the petitioner that he had been in possession could not be accepted and pursuant to the Order of the High Court for the construction of Over bridge proceedings were taken to remove the encroachment. Thus, the representation of the petitioner stood rejected. Aggrieved by this, the present writ petitioner is before this Court.

2. Learned Senior counsel appearing for the petitioner submitted that the petitioner had been in possession of the property after valid assignment made in his favour by the Government and the respondents have now taken a stand that the petitioner is an encroacher and the same is unsustainable in law.

3. On notice, counter has been filed by the 2nd respondent, wherein, it has been specifically averred that as per the Revenue Standing Orders No. 21, only the Tahsildar and above the rank of Tahsildar can issue assignment patta for Government Meikkal Poramboke land after obtaining orders from the District Collector. The village accounts do not contain any change recording the assignment. It is further stated that Survey No. 167 is still mentioned as Government Meikkal poramboke land. In these circumstances, on the mere possession of E.B. card, family card and property tax receipt, the petitioner could not claim any entitlement of holding the land under assignment order.

4. Section 10 of the Tamil Nadu Land Encroachment Act, 1905 provides for an appeal remedy to the Collector from any decision or Order passed by the Tahsildar or Deputy Tahsildar under the Act and to such officer as may be specified by the State. Section 10A provides for appeal remedy and pending decision in appeal, u/s 10-B, the aggrieved party can move for any interim mechanism. In the background of the effective alternative remedy thus available under the Act and that the question raised being one of fact, the proper course

for the petitioner would be to exhaust the appeal remedy available u/s 10 of the Act. In these circumstances, we do not find any justifiable ground to pass orders on the merits of the contentions, they being the disputed questions of facts. In the light of the alternative remedy available u/s 10 of the Tamil Nadu Land Encroachment Act, 2005, this writ petition is dismissed. However, considering the fact that the time limit for filing the appeal has already expired, we direct the petitioner to file an appeal, if so advised, before the District Collector, Chengalpet, within a period of two weeks from today. If and when the appeal is filed by the petitioner, the District Collector, Chengalpet should take up the appeal, hear the same and pass orders, without any reference to the ground of limitation. Considering the availability of effective alternative remedy and the fact that already orders were passed in W.P. No. 1168 of 2012 and interim orders were made in W.P. Nos. 33650, 33719, 33733, 33760 and 33791 of 2012, till the appeal is filed by the petitioner, the respondents shall not disturb the possession of the petitioner. On filing of the appeal, it is open to the petitioner to move for any interim protection before the appellate authority. However, there is no order as to costs. Consequently, the connected miscellaneous petition is closed.