

(2016) 08 MAD CK 0124

In the Madras High Court

Case No : Writ Appeal (MD) No. 127 of 2016 and C.M.P.(MD) No. 578 of 2016.

**The Commissioner, Rameshwaram Municipality, Ramanathapuram
District - Appellant/3rd Respondent @HASH Sivaramakrishnan - 1st
Respondent/Petitioner**

Date of Decision : 29-08-2016

Acts Referred:

Citation : (2016) 7 MLJ 695

Hon'ble Judges : Nooty. Ramamohana Rao and S.S. Sundar, JJ.

Bench : Division Bench

Advocate : Mr. M. Kannan, Advocate, for the Appellant; Mr. M. Solaisamy, Advocate, for the Respondent No. 1; Mr. N.S. Karthikeyan, Additional Government Pleader, for the Respondent Nos. 2 and 3

Final Decision : Allowed

Judgement

Mr. S.S. Sundar, J. - This Writ Appeal has been filed by the Commissioner, Rameshwaram Municipality against the order dated 20.08.2015 passed in W.P. (MD) No. 14672 of 2015, filed by the first respondent herein for issuing a Writ of Certiorarified Mandamus to quash the proceeding of the appellant in Na.Ka. No. 390/2015/A2, dated 10.08.2015 and to direct the Tahsildar and the appellant herein not to remove the petitioner's house in Survey No. 696 in Rameshwaram Town, Ramanathapuram District.

2. The order impugned in the Writ Petition in W.P.(MD) No. 14672 of 2015 is an order informing the first respondent herein about the removal of encroachment proposed by the appellant on 13.08.2015 and directing the encroachers to remove such encroachment in Survey No. 695 on their own.

3. Heard Mr. M. Kannan, learned counsel for the appellant, Mr. M. Solaisamy, learned counsel for the first respondent and Mr. N.S. Karthikeyan, learned Additional Government Pleader for the respondents 2 and 3.

4. Before dealing with the contentions of respective parties, it is necessary to consider the orders in the previous writ petitions and about the two suits that are

filed by the first respondent along with others. The first respondent/writ petitioner, has filed another Writ Petition earlier in W.P.(MD) No. 16748 of 2012 for issuing a Writ of Certiorarified Mandamus to quash the proceedings of the appellant herein, dated 01.12.2012 and to direct the other respondents to issue patta to the first respondent herein, the petitioner in the writ petition in respect of the house site in Survey No. 747 in Ward No. 11 in Ramanathapuram Municipality. The proceedings of the Commissioner challenged in W.P.(MD) No. 16748 of 2012, is a notice directing the encroachers to remove the encroachment in the cart track (near Tar road) which lies in Railway Feeder Road in Ward No. 11 and in front of Survey No. 747. The contention of the first respondent herein in the said writ petition, is that he is residing in a hut built by him in D. No. 11/29 in Survey No. 747 along with his family members for more than 40 years. It is also the case of the first respondent herein that he has been in possession of the land in Survey No. 696 measuring to an extent of 13 cents by putting up a dwelling house and that he had approached the District Collector on a number of occasions to grant patta in respect of the said land in his possession and that the municipality has also by its Resolution No. 160, dated 29.10.2007 had resolved to recommend to the District Collector for the grant of patta to the petitioner in W.P.(MD) No. 16748 of 2012.

5. It is the further case of the first respondent herein, in his previous writ petition in W.P.(MD) No. 16748 of 2012, that the Commissioner, Rameshwaram Municipality issued a notice dated 01.12.2012 which is impugned in the writ petition in W.P.(MD) No. 16748 of 2012, at the behest of one N.V.R.Sethuramalingam who appears to have given representations on 18.06.2012 and 24.07.2012 requesting the municipality to remove the encroachment on the pathway vested in the municipality. Since the first respondent herein was directed to vacate and hand over the vacant possession of the dwelling house, it was stated by the first respondent herein that he was constrained to file W.P.(MD) No. 16748 of 2012. The first respondent herein took the stand in the first writ petition that the land in his occupation in Survey No. 747, measuring to an extent of 13 cents is classified in the revenue records as Natham poramboke and that the said land did not vest with the State or any local authority or the municipality so as to issue the eviction notice.

6. From the reading of the affidavit filed in support of the writ petition, W.P.(MD) No. 16748 of 2012, it can be seen that the petitioner therein viz., the first respondent herein has no definite case as to the Survey Number of the land in which he claimed to have constructed a dwelling house. In other words, it can be seen that the impugned order therein is for removal of encroachment of a land which is located in front of Survey No. 747 which is claimed to be a cart track which vested with the municipality. However, the first respondent herein proceeded on the footing that he is a person in enjoyment of land in Survey No. 747 and a further direction was also sought for grant of patta to the writ petitioner over the land in his occupation in Survey No. 747. The second writ petition has been filed by one N.V.R. Sethuramalingam in W.P.(MD) No. 16915 of

2012 for issuing a writ of mandamus to direct the revenue officials and the Commissioner of Rameshwaram Municipality to implement the order of Tahsildar dated 28.07.2012 directing the Commissioner of Municipality to remove the encroachment made on the cart track which lies opposite to Survey No. 747. In the affidavit filed in support of W.P.(MD) No. 16915 of 2012 the petitioner therein, submitted that the property in Survey No. 747 belongs to him by inheritance. Since the cart track abutting his patta land in Survey No. 747 has been used by the writ petitioner in W.P.(MD) No. 16915 of 2012 and general public, the petitioner therein came forward with a prayer to remove the encroachment in the cart track which is just in front of the land owned by him.

7. The first writ petition filed by the first respondent herein in W.P.(MD) No. 16748 of 2012 and the second writ petition filed by N.V.R. Sethuramalingam in W.P.(MD) No. 16915 of 2012 came to be disposed of by a Division Bench of this Court by a common order dated 17.03.2014. The operative portion of which reads as follows:

"4. The fact that the petitioner in the second writ petition is owner of the land in S. No. 747 is not disputed. Neither the Municipal Commissioner nor the petitioner in the first writ petition has any dispute about it. Though, unfortunately, by a clerical error, the petitioner in the first writ petition seeks patta for the land in S. No. 747. The petitioner is actually in occupation of S. No. 696 and not S. No. 747. This is confirmed by the learned counsel for the petitioner as well as by the representation given by the petitioner before coming to Court.

5. The land in respect of which the petitioner in the first writ petition seeks patta, is admittedly in S. No. 696. The cart track is only in S. No. 695.

6. The grievance of the petitioner in the second writ petition is only about the encroachment in the cart track. Mr. M. Kannan, learned counsel appearing for the Municipality, confirms that the work undertaken by the Municipality is only removal of the encroachment in the cart track in S. No. 695. In other words, the learned counsel confirms that they are not taking any action in respect of the land in S. No. 696. In such circumstances, the grievance of the petitioner in the first writ petition about the notice for removal of encroachment automatically stands redressed. The grievance of the petitioners in the second writ petition also stands redressed, in view of the fact that the Municipality is taking action to remove the encroachment on the cart track.

7. In view of the stand taken by the Municipality for the removal of the encroachment in the cart track in S. No. 695, the second writ petition is closed. Insofar as the first writ petition is concerned, the Municipality is not taking steps to remove any building in S. No. 696. Therefore, one portion of the prayer made by the petitioner in the first writ petition also stands redressed.

8. Insofar as the second prayer is concerned, the revenue is directed to examine the request, find out if the land is natham land and pass appropriate orders in accordance with law, considering the fact that natham land can be used only for

limited purposes and upto a limited extent of land. Though the petitioner has asked for 13 cents as per the Board Standing orders, patta for natham land could be granted only to a limited extent, which shall be taken into account by the Tahsildar. Since the Municipality has taken steps to remove the encroachment in the cart track, they shall continue to do so and ensure that there is no encroachment in the cart track."

8. From the order above extracted, after hearing both sides in both the writ petitions, this Court has correctly recorded the fact that the petitioner in W.P. (MD) No. 16748 of 2012 seeks patta localised in respect of the land in Survey No. 696 and that the cart track is only in Survey No. 695. After recording the fact that the petitioner's prayer for grant of patta should be read as one in respect of Survey No. 696, the statement of the counsel for the municipality that the municipality has undertaken to remove the encroachment in the cart track in Survey No. 695 and that it has no intention to take any action in respect of the land in Survey No. 696, this Court disposed of both the writ petitions. It is to be noted that the prayer in the second writ petition was found to have been redressed in view of the stand taken by the municipality that the municipality is taking action to remove the encroachment on the cart track. Similarly, the prayer for grant of patta to the first respondent herein was also redressed by issuing a direction to the revenue to examine the request of the first respondent herein considering the scope of assignment in respect of natham land in Survey No. 696.

9. Pursuant to the order of this Court dated 17.03.2014 in W.P.(MD) No. 16748 of 2012 and 16915 of 2012, the order impugned in the present writ petition in W.P. (MD) No. 14672 of 2015 appears to have been passed. As noted above, the impugned order in the writ petition dated 10.08.2015 is only a notice informing the encroachers about the proposal for the removal of the encroachment to be undertaken on 13.08.2015 in the presence of the Tahsildar in Survey No. 695. The first respondent herein in his affidavit filed in support of the writ petition in W.P.(MD) No. 14672 of 2015 has categorically stated that his house is situated in Survey No. 696 in Rameshwaram Town and that the cart track is situated at Survey No. 695. When it is the consistent stand of the municipality that the cart track lies only in Survey No. 695 and that the petitioner and others have encroached upon land in Survey No. 695, the first respondent herein/writ petitioner is in effect challenging the eviction notice in respect of land in Survey No. 695 only on the ground that he has not encroached into the land in Survey No. 695 and that his house is located only in Survey No. 696. When the petitioner is not in encroachment of any portion of the land in Survey No. 695, he need not apprehend any danger and file the writ petition to quash the eviction notice which is only in respect of the cart track lying in Survey No. 695.

10. However, the writ petition in W.P.(MD) No. 14672 of 2015 was disposed of by a learned Single Judge of this Court by order dated 20.08.2015 with an observation that the petitioner is residing in Survey No. 696 and that there is no need for the respondents to remove the petitioner, as the land in which the

petitioner is in occupation, is not a cart track. It is only against the finding of the learned Single Judge that the land in occupation of the first respondent herein is not a cart track and that he is residing only in Survey No. 696, the present appeal is filed by the appellant municipality. The learned counsel for the appellant mainly contended as follows:

(a) It is the positive case of the appellant that the first respondent herein/writ petitioner has encroached into the cart track which lies in Survey No. 695 and that the case of the first respondent about his residence only in Survey No. 696 without an encroachment into the land in Survey No. 695 cannot be taken for accepted as correct particularly having regard to the stand taken by the writ petitioner in both the civil suits in O.S. Nos. 14 of 2014 on the file of the District Munsif Court, Rameshwaram and the other in O.S. No. 35 of 2014 on the file of the District Munsif Court, Rameshwaram.

(b) Since the appellant municipality has admitted the case of the first respondent herein, the observation of the learned Single Judge will pre-judicially affect the eviction proceedings initiated by the municipality for the removal of encroachment by the first respondent herein into the cart track which lies in Survey No. 695.

(c) The learned Single Judge failed to consider the important fact that pursuant to the order passed by the Division Bench of this Court in the previous writ petitions, the appellant municipality has made a Survey of land in Survey No. 695 and initiated action to remove the encroachment made by the first respondent herein in Survey No. 695.

11. After taking a stand in the writ petition that he has not encroached into the cart track in Survey No. 695 and that his possession and enjoyment by construction of a dwelling house is confined to land in Survey No. 696, the first respondent has taken a peculiar stand before us, claiming some right over the land in Survey No. 695, when he was confronted with the stand taken by him in the suit filed by the first respondent herein along with others. A counter affidavit has been filed in the Writ Appeal by the first respondent herein explaining his stand in his earlier writ petition by stating that the revenue authorities and the appellant failed to provide the correct details in respect of the survey numbers then.

12. The learned counsel for the first respondent relies upon a resolution of the council of appellant municipality dated 29.10.2007 wherein the municipal council has resolved to make a recommendation to the Tahsildar for the grant of patta for the land in Survey Nos. 695 and 696 which is stated to be classified as cart track promboke. The counsel for the first respondent herein also produces before this Court a xerox copy of a revenue record issued by Inspector of Natham Lands wherein the petitioner's wife is found to be in enjoyment of the land in Survey No. 695/3, which is classified as natham. In the same document Survey No. 695/1 is classified as road. The counsel further relies upon another document

namely the communication dated 31.03.2008 sent by the Executive Officer of the appellant municipality to the Tahsildar along with a no objection letter for the grant of patta in respect of the land both in Survey No. 695 and 696 to 21 persons. The counsel further drew our attention to a representation dated 18.06.2012 alleged to have been given by the first respondent herein and six others for the grant of patta for the lands in respect of Survey No. 695/1 to 695/11. The counsel for the first respondent relies upon the proceedings of the Revenue Divisional Officer dated 21.06.2012 requesting the Tahsildar of Rameshwaram to take further action on the representation dated 18.06.2012 of the petitioner and others for the grant of patta in respect of Survey No. 695/1 to 695/11. It is quite surprising to notice from the arguments of the counsel for the first respondent/writ petitioner that the first respondent has applied for grant of patta in respect of the land in Survey No. 695 and hence he is justified in challenging the impugned order namely eviction notice which is in respect of the cart track in Survey No. 695. The stand now taken before us by the first respondent is quite contrary to the case of the petitioner in the present Writ Petition in W.P.(MD) No. 14672 of 2015 and the previous writ petition filed by him in W.P.(MD) No. 16748 of 2012.

13. It is to be noted that in the suit filed by the first respondent and others in O.S. No. 14 of 2014, the specific stand of the first respondent is as follows:

1. ne;j thjpf; trpf;Fk; nlkhdJ bjd;tlyhf bryY; k; Rkhh; 30 mo jhh;r;rhiyf;Fk; mjd; BkwF; g;gf;fk; Rkhh; 4 mo efuhl;rpahy; fl; g;gl;Lss; eilBkilF; k; BkwF; gg; f;fk; css; J. i& thjpf; trpf;Fk; gFjp tll; hl;rpah ; mYtyfj;jpw;Bfh, nuhBk!;tuk; efuhl;rp;Bfh mtrpak; Bjitg;gLk; R{Hypy; khw;W nlk; bfhlF; k; gl;rj;jpy; epr;rak; fhyp bra;J jUthh;fs; vd;w cWjpbkhHpiaa[k; efuhl;rp mYtyfj;jpw;F vGjp bfhlj;Jss; hh;fs.; nuhBk!;tuk; efuhl;rpahy; mDg;ggg; ll; mwptpgg; pYk; efuhl;rp;F brhe;jkhd tz;og;ghij (jhh;r;rhiyf;F mUfpy;) vd;W Fwpg;gplg;gl;oUf;fpwJ. Mf jhh;r;rhiy nUf;fpwJ vd;g; Jk; bghJkf;fSf;F nila{W ny;yhky; ne;j thjpf; trpf;fpwhh;fs; vd;g; Jk; cWjpahf bjhpfpwJ.

14. The suit in O.S. No. 14 of 2014 is for grant of permanent injunction restraining the Commissioner of Rameshwaram municipality from removing the plaintiffs from the suit property. The suit property has been described as the property in Survey No. 695/1 to 695/11. Thus, the first respondent who is the first plaintiff in the suit has categorically admitted that they have given an undertaking to the municipality to vacate the suit property if the suit property is required by the Tahsildar for his or for the municipality provided they are given an alternative place. It is also their case that encroachment of the plaintiffs do not cause any hindrance to the public as the cart track in which they are in enjoyment is located adjoining Tar road. Thus it is tacitly made clear that the first respondent has encroached upon land in Survey No. 695. The typed set of papers filed by the learned Special Government Pleader representing respondents 2 and 3 herein also shows that the first respondent herein has put up a building encroaching into the road in Survey No. 695. The revenue records

produced by him also suggest that Survey No. 696 is a Government poramboke and it is classified as Road.

15. It is also brought to the notice of this Court that the first respondent and others who are the plaintiffs in O.S. No. 14 of 2014 has filed a memo to withdraw the suit and the suit is dismissed as not pressed on 15.09.2014. However, a fresh suit has been filed by the same set of plaintiffs praying for a permanent injunction restraining the defendants therein namely the revenue officials and the Commissioner of Rameshwaram Municipality from evicting the plaintiffs in any manner from the suit property. Even in the second suit, the suit property is described as one located in Survey No. 695/1 to 695/11. However, Survey No. 696 has been referred to as old Survey Number. It is pertinent to mention that the second suit is filed without obtaining the leave of the Court after withdrawal of the first suit which is dismissed as not pressed. The first respondent herein cannot be allowed to take different stands on different occasions in different proceedings, to suit his immediate convenience. Obviously the writ petitioner is not fair to the Courts which are approached by him, by not sticking one factual basis. This Court deprecates the petitioner's conduct. The explanation offered by the counsel for the first respondent blaming the revenue officials for all the confusion is only an attempt to cover up the inherent defects and inconsistencies in the pleadings of the first respondent. It is a fact that the first respondent has no right either in the land in Survey No. 696 or in the land in Survey No. 695. Subject to the liberty that was granted by this Court earlier for seeking patta in respect of Survey No. 696, the first respondent has no right to thwart the eviction proceedings initiated by the appellant, that too pursuant to a direction issued by a Division Bench of this Court on 17.03.2014. At best, the first respondent, in the absence of any title, can only seek for assignment of land if it is permissible in law from the Government. The first respondent who seeks relief from this Court under Article 226 of the Constitution of India is expected to come with clean hands and in this case, the first respondent is not entitled to any indulgence from this Court for his conduct which has been referred to in detail earlier.

16. Having regard to the facts set up by the first respondent in the civil suits filed by him along with others, the observation made by the learned Single Judge in paragraph No. 4 of the order is capable of being misinterpreted and can pave way for unnecessary litigation and complications in proceeding with the eviction proposed by the appellant for removal of the encroachment in the cart track in survey No. 695 by the impugned proceedings of the appellant dated 10.08.2015. The proceedings dated 10.08.2015 which is impugned in W.P.(MD) No. 14672 of 2015 is also in terms of the earlier common order dated 17.03.2014 passed by this Court in W.P.(MD) No. 16743 and 16915 of 2012. Hence, this Court finds that the writ petition filed by the writ petitioner is wholly misconceived and is liable to be dismissed. As directed by this Court earlier in the order dated 17.03.2014, the appellant is directed to proceed with removal of encroachment in the cart track/road in Survey No. 695 in Rameshwaram Town in accordance

with law within a period of six weeks from the date of receipt of a copy of this order. The Writ Appeal is, therefore, allowed and the order of the learned Single Judge in W.P.(MD) No. 14672 of 2014 dated 20.08.2015 is set aside and the Writ Petition filed by the first respondent in W.P.(MD)14672 of 2015 stands dismissed. There is no order as to costs. Consequently, the connected miscellaneous petition is closed.