

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2015

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THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.17936 of 2015

And

M.P.No.1 of 2015

P.Dhanalakshmi

...Petitioner

Vs.

1 The District Collector
Salem District Salem.

2 The Revenue Divisional Officer
Mettur Taluk Mettur Salem District.

3 The Tahsildar
Mettur Taluk Mettur Salem District.

4 The Executive Engineer
Construction and Maintenance Public Works
Department Salem-7
Salem District.

...Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the order of the 3rd respondent dated 06.04.2015 in Na.Ka.No. 4741/2015-B5 and quash the same and consequently forbear the Respondents from constructing the Public Toilet in the lands in Survey No.245/1, Olaipatti Village, Mettur Taluk, Salem District and thereby preventing the ingress and egress of the petitioner to her hut at Survey No.245/2B, Olaipatti Village, Mettur Taluk, Salem District.

For Petitioner : Mr.K.Selvaraj

For Respondents : Mr.V.Subbiah
Special Government Pleader

O R D E R

By consent, the writ petition is taken up for final disposal.

2.The petitioner on an earlier occasion, approached this Court by filing W.P.No.4857 of 2015 contending among other things that the respondent under the guise of constructing toilet, is blocking the ingress and egress of the petitioner to her hut at Survey No.245/2B, Olaipatti Village, Mettur Taluk, Salem District, in the lands in Survey No.245/1, Olaipatti Village, Mettur Taluk, Salem District and this Court vide order dated 25.02.2015, has directed the third respondent to consider and dispose of the petitioner's representation dated 12.01.2015 after issuing notice to her and also after hearing the Public Works Department and pass appropriate orders within a period of three weeks from the date of that order.

3.The petitioner would further state that in compliance of the above said order, the third respondent has issued notice on 06.04.2015 calling upon the petitioner to appear before him on 10.04.2015, but even prior to that, has passed the impugned order on 06.04.2015 itself, rejecting her representation and hence, came forward to file this writ petition.

4.Mr.K.Selvaraj, learned counsel appearing for the petitioner would submit that though the third respondent had fixed the date of hearing on 10.04.2015, had disposed of the representation by means of the impugned order dated 06.04.2015 rejecting the said representation and hence on the sole ground, impugned order warrants interference and would further contend that it is alleged that the petitioner has encroached upon a portion of the land in S.No.245/1, but the petitioner did not encroach any part of the said land and no notice alleging encroachment has been given to her and the said reason has been invented only for rejection of the representation.

5.This Court heard the submissions of Mr.V.Subbiah, learned Special Government Pleader who accepts notice on behalf of the respondents.

6.Mr.V.Subbiah, learned Special Government Pleader has drawn the attention of this Court to the objection submitted by the petitioner dated 20.04.2015 and would submit that the only grievance expressed by the petitioner is that since the survey number in which the public toilet is going to be constructed, is classified as "Road Poromboke", unless the classification is changed the petitioner cannot express any grievance as to the impugned order and prays for dismissal of the writ petition.

7.This Court has carefully considered the rival submissions and also perused the materials placed on record. The third respondent in compliance of the order dated 25.02.2015 made in W.P.No.4857 of 2015, has issued notice to the petitioner fixing the date of hearing on 10.04.2015 and called upon her to produce the relevant document and even four days prior to the date of hearing, has passed the impugned order on 06.04.2015 itself and rejected the representation.

8.In the considered opinion of this Court, act of the third respondent in passing orders even prior to the date of hearing is per se un-sustainable and warrants interference. Hence, this writ petition is partly-allowed. The impugned order dated 06.04.2015 is set aside and the matter is once again remanded to the third respondent for fresh adjudication. The third respondent shall issue fresh notice to the petitioner as well as to the fourth respondent fixing the date of hearing and after affording the petitioner as well as the fourth respondent, an opportunity of hearing, shall pass orders in accordance with law within a period of six weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

- 1 The District Collector
Salem District Salem.
- 2 The Revenue Divisional Officer
Mettur Taluk Mettur Salem District.
- 3 The Tahsildar
Mettur Taluk Mettur Salem District.

4 The Executive Engineer
Construction and Maintenance Public Works
Department Salem-7
Salem District.

1 CC to Mr.K.Selvaraj, Advocate SR.No. 30647

1 CC to the Government Pleader, SR.No. 30857

W.P.No.17936 of 2015
And
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sr (CO)
PSI (08.07.2015)



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