

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 23-02-2015

CORAM:

THE HONOURABLE MR. JUSTICE SATISH K. AGNIHOTRI
AND
THE HONOURABLE MR. JUSTICE M. VENUGOPAL

W.P. No.4584 of 2015 and M.P. Nos.1 & 2 of 2015

Loganayaki

Petitioner

Vs.

- 1 The District Collector
District Collector Office
Kancheepuram, Kancheepuram District
- 2 The Tahsildar
Vandalur
Chengalpet Taluk, Kancheepuram District
- 3 The Revenue Inspector
Vandalore Division
Chengalpet Taluk
Kancheepuram District

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus, calling for the records of the third respondent herein relating to notice dated 18.07.2014 issued under Section 7 of the Land Encroachment Act, 1950 in respect of 0.02.0 hectares of land in Survey No.110/1B in No.8, Ayyencherry Village, Kancheepuram District and quash the same and forbear the respondents from, in any manner, evicting the petitioner from the said property. सत्यमेव जयते

For petitioner
For respondents

M/s. AL. Gandhimathi
Mr. N. Sakthivel
Government Advocate

ORDER

(Order of the Court was made by SATISH K. AGNIHOTRI, J.)

Being aggrieved by the notice dated 18.07.2014 issued under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, (for short "the Act"), the petitioner has come up with this writ petition, seeking to quash the same on the ground that no opportunity of

hearing was afforded to her before directing her to remove the encroachment by demolishing the alleged unauthorised structure.

2. It is contended by the learned counsel for the petitioner that the petitioner was in peaceful possession of the property in question for a long period. Without affording an opportunity of hearing, all of a sudden, she has been directed to vacate the premises in question and also to demolish the same, as, according to the authorities, the premises in question was on the Government land.

3. The notice in question has been issued under Section 7 of the Act, which contemplates service of notice on the person reported to be in unauthorised occupation of land, being the property of the Government. It also contemplates that the notice should specify the land so occupied, calling on the encroacher to show cause as to why he should not be proceeded against under Section 6 before a certain date. However, the first proviso provides that no such notice shall be necessary in the case of any person unauthorisedly occupying the land, if he had been previously evicted from such land under Section 6 or if he has previously vacated such land voluntarily, after the receipt of a notice under Section 5-B under this section.

4. On a perusal of the impugned notice, it is evident that there is no reference as to whether the petitioner has been either previously evicted, pursuant to the order under Section 6 or has vacated after the receipt of notice under Section 5-B or under the provisions of the Act. At this stage, even if the petitioner is in unauthorised occupation, she cannot be directed to vacate the encroachment without affording an opportunity of hearing to her before passing an order under Section 6.

5. Accordingly, we direct the authorities to consider the representation / reply filed by the petitioner, if any, pursuant to this notice and pass an order thereafter under Section 6, on its own merit and according to law. It is, thereafter, open to the authorities to take appropriate action as provided under the provisions of the Act. The petitioner, on her request, is granted two weeks time to file her reply/representation to the impugned notice, from the date of receipt of a copy of this order. Thereafter, further two weeks time is granted to the authorities to consider the same and take appropriate action on its own merit and according to law.

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6. Accordingly, this writ petition stands disposed of. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar
Dated:5.3.15

True Copy

Sub Assistant Registrar

To

- 1 The District Collector
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Kancheepuram, Kancheepuram District
 - 2 The Tahsildar
Vandalur
Chengalpet Taluk, Kancheepuram District
 - 3 The Revenue Inspector
Vandalore Division
Chengalpet Taluk
Kancheepuram District
- +1 CC TO GOVERNMENT PLEADER, SR.9852.

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W.P. No.4584 of 2015

सत्यमेव जयते

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