



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.08.2015

CORAM:

THE HONOURABLE Mr.JUSTICE R.SUBBIAH

W.P. (MD)No.19613 of 2014

and

M.P. (MD)No.1 of 2014

Lakshmi Ammal

... Petitioner

Vs.

The Commissioner,
Madurai City Municipal Corporation,
Anna Maligai, Alagar Kovil Road,
Tallakulam,
Madurai 625 002.

... Respondent

PRAYER: Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned notice issued by the respondent in M4PO5/005271/2013, dated 11.11.2014 and quash the same.

For Petitioner : Mr.M.Rajaraman

For Respondents : Mr.Prabhu Ramachandran

ORDER

This Writ petition has been filed for issuance of a Writ of Certiorari, calling for the records relating to the impugned notice issued by the respondent in M4PO5/005271/2013, dated 11.11.2014 and quash the same.

2.The case of the petitioner is that a property comprised in Survey No.411/1 and 411/2, M.K.Puram 1st street, Madurai, originally belonged to one Samayamuthu Ammal wife of Late Keeladian and she was in possession and enjoyment of the said property by constructing a small hut and was residing there. The said Samayamuthu Ammal had been issued with 'B' memo by the Government and had been paying tax for several years in her name. The petitioner had purchased the said property for a valuable consideration from the said Samayamuthu Ammal by a registered sale deed dated 13.09.1993 and from the date of sale deed, the petitioner is in possession and enjoyment of the said property. The Tamil Nadu Housing Board has acquired a larger extent of property, adjoining the property of the petitioner and the Housing Board officials had tried to encroach upon the petitioner's property also. Hence, the petitioner had filed a suit in O.S.No.561 of 1995 before the District Munsif, Madurai Town against the Housing Board and the same was decreed by a judgment and decree dated 15.10.2001 restraining the Housing Board officials



from interfering with the possession and enjoyment of the petitioner. The petitioner had applied for building plan approval for constructing shops in the said property before the Avaniapuram Panchayat. Accordingly, building plan approval was duly granted and then the petitioner had constructed shops in the said property and let out the same to various tenants. The petitioner had also obtained electricity service connections for the said shops in her name and she is also paying property tax.

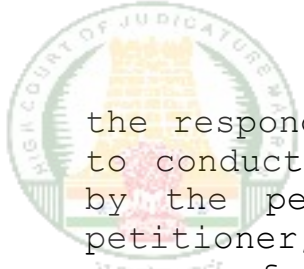
3.The grievance of the petitioner is that that the officials of the respondent Corporation had tried to interfere with the possession of the petitioner's property and hence, the petitioner had filed a suit in O.S.No.51 of 2011 before the District Munsif, Madurai Taluk for permanent injunction, restraining the Madurai Corporation from interfering with the possession and enjoyment of the property and the said suit was also decreed by a judgement and decree dated 27.01.2012. Even after the said decree, the officials of the respondent Corporation had tried to interfere with the possession and hence, the petitioner had filed an execution petition in E.P.No.19 of 2013 before the District Munsif of Madurai Taluk and the same is pending.

4.The further contention of the petitioner is that the respondent Corporation had sent a notice dated 11.11.2014 to the petitioner, stating that the petitioner had encroached upon the property, which belongs to the respondent Corporation and that the petitioner has to be removed within a period of 14 days. The petitioner had sent an objection, in view of pendency of the execution of the decree in O.S.No.51 of 2011 dated 27.01.2012. The grievance of the petitioner is that respondent Corporation without conducting any survey or enquiry, had issued the said notice and the same is in violation of the principles of the natural justice and the respondent Corporation ought to have given an opportunity of personal hearing before issuing such a notice, since the same involves civil consequences, which affects her right. Hence, the notice issued itself is without jurisdiction and hence, the same is liable to be set aside. Challenging the same, the petitioner is before this Court, with the present Writ petition.

5.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

6.The main grievance of the petitioner is that without conducting survey or enquiry, the respondent Corporation has issued the impugned notice dated 11.11.2014. Admittedly, the petitioner has got a decree in her favour and she is in possession and enjoyment of the same. Without considering the same, the respondent Corporation are trying to evict the petitioner without following the provisions of law.

7.But on a perusal of the impugned order I find that the respondent had stated in the impugned order, if the petitioner has any objection, she can submit the same within 14 days. Hence, I am of the opinion that there is no need to quash the impugned order dated 11.11.2014. As the petitioner has already sent objection to



the respondent Corporation, the respondent Corporation is directed to conduct enquiry and pass orders based on the objection raised by the petitioner by affording opportunity of hearing to the petitioner, within a period of 6 weeks from the date of receipt of a copy of this order. The petitioner is at liberty to produce all relevant documents to substantiate her claim in respect of the above said property.

8.The Writ petition is disposed of accordingly. No costs. Consequently, connected M.P.is clsoed.

Sd/-

Assistant Registrar (T&P)

True Copy/

Sub Assistant Registrar

nbj

To

The Commissioner,
Madurai City Municipal Corporation,
Anna Maligai, Alagar Kovil Road,
Tallakulam,
Madurai 625 002.

+1CC to Mr.M.Rajaraman Advocate Sr.No.46820

+1CC to Mr.R.Prabhu Ramachandran Advocate Sr.No.46809

GJM/NGM/SS/9.9.15-2P-4C

W.P. (MD) No.19613 of 2014
14.08.2015