



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :18.08.2015

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P (MD) .No.8879 of 2015

and

M.P (MD) Nos.1 and 2 of 2015

WEB COPY

Lakshmi Ammal

... Petitioner

Vs.

The Assistant Engineer,

Public Works Department/Water resource organization,

Vaigai Section, Periyar Vaigai Basin Sub-Division No.II,

Madurai-2.

... Respondent

This Writ Petition has been filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records relating to the impugned notice issued by the respondent, dated 29.05.2015 and quash the same.

For petitioner

: Mr.M.Rajaraman

For Respondents

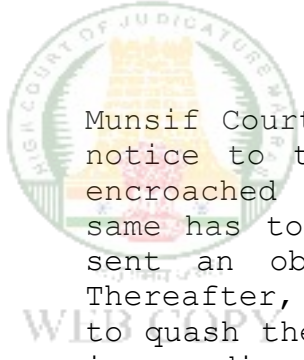
: Mr.M.Murugan,

Government Advocate

ORDER

This Writ Petition has been filed praying for a Writ of Certiorari calling for the records relating to the impugned notice issued by the respondent, dated 29.05.2015 and quash the same.

2. The case of the petitioner is that the property comprised in Survey No.411/1 and 411/2, M.K.Puram 1st street, Madurai, originally belonged to one Samayamuthu Ammal, W/o.Late.Keeladian and she was issued with "B" memo by the Government and she had been paying the land revenue for several decades. The petitioner purchased the said property from the said Samayamuthu Ammal by a registered sale deed dated, 13.09.1993. From the date of purchase, the petitioner was in possession and enjoyment of the said property. The property is assessed to property tax in the name of the petitioner and the petitioner has been paying the property tax till date. It is further stated that a large extent of property comprised in S.No.411/1 part and 411/2 part was given to the Tamil Nadu Housing Board as early as on 25.09.1989, which is situated near the property owned by the petitioner and thereafter, the Housing Board tried to encroach upon the petitioner's property. Hence, the petitioner filed O.S.No.561 of 1995 on the file of the District Munsif Court, Madurai. The said suit was decreed in favour of the petitioner vide judgment dated, 15.10.2001, restraining the Housing Board Officials from interfering with the peaceful possession and enjoyment of the petitioner. Thereafter, the petitioner applied for construction of shops in the said property and Avaniapuram panchayat had also duly approved the plan and the petitioner constructed shops in the said property and let out the same to various tenants. While so, the Officials of Madurai City Municipal Corporation, had tried to interfere with the peaceful and enjoyment of the petitioner and hence, the petitioner filed O.S.No.51 of 2011 on the file of the District Munsif Court, Madurai. The said suit was also decreed in favour of the petitioner vide judgment and decree, dated 27.01.2012. Even after the said decree, the Corporation tried to interfere with the peaceful possession and enjoyment of the petitioner and hence, the petitioner filed E.P.No.19 of 2013 before the District



Munsif Court, Madurai. In such circumstances, Madurai Corporation sent a notice to the petitioner on 11.11.2014 stating that the petitioner had encroached upon the property belonging to Madurai Corporation and the same has to be removed within a period of 14 days. The petitioner has sent an objection for the same through his Advocate on 31.12.2014. Thereafter, the petitioner filed W.P.No.19613 of 2014 before this Court to quash the notice sent by the Corporation. When the said Writ Petition is pending, the petitioner received the impugned notice from the respondent on 29.05.2015 stating that as if the said land belongs to Public Works Department. Hence, now it is the contention of the petitioner that the said notice was issued by the respondent Public Works Department only due to the instigation of the Madurai Corporation, with a view to compel the petitioner to withdraw the execution petition filed by her as against the officials of Madurai Corporation. Hence, the petitioner has come forward with this Writ Petition for the above stated relief.

3. The respondent filed a detailed counter affidavit inter alia stating that as per the report of the Surveyor attached to the Taluk Office, Madurai South, in the revenue records, the property in Survey No.411 is assigned as Avaniyapuram Tank Poramboke and the petitioner encroached upon the same to an extent of 546 sq. mts. The judgment and decree, dated 15.10.2001 passed in the suit filed against the Tamil Nadu Housing Board in O.S.No.561 of 1995 on the file of the District Munsif Court, Madurai, will not bind on the respondent herein. Hence, there is no legal impediment for the respondent to initiate action. Similarly, the judgment and decree, dated 27.01.2012, passed in the suit filed against the Madurai Corporation in O.S.No.51 of 2011 on the file of the District Munsif Court, Madurai, will not bind on the respondent.

4. In the counter affidavit, it has been further stated that the disputed property in Survey No.411 has been assigned in the revenue records as well as in the village records as "Avaniyapuram Tank Poramboke". This vital fact has not been denied by the petitioner with regard to the nature of the disputed property. In view of Section 12 of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, the Government may, in public interest alienate any part of the tank poramboke land which is under the control of the Public Works Department without interfering with storage capacity and water supply.

5. When the matter is taken up for consideration, the learned counsel for the petitioner submitted that already Madurai Corporation has initiated action against the petitioner to evict from the disputed land. But, the petitioner has filed O.S.No.51 of 2011 on the file of the District Munsif Court, Madurai, and a judgment and decree was also passed in her favour. The Officials of the Madurai Corporation, who failed in their attempt, instigated the respondent to issue the impugned notice. Now the impugned notice has been issued straightaway to the petitioner without calling for any explanation from him.

6. Per contra, the learned counsel appearing for the respondent submitted that since earlier Madurai Corporation has issued show-cause notice calling upon the petitioner to give explanation with regard to the encroachment made by the petitioner, which does not mean that the respondent has no authority to issue the impugned notice. Since the



petitioner has encroached the "Avaniyapuram Tank Poramboke", the respondent is the proper authority to initiate action against the petitioner. Hence, he sought for dismissal of the Writ Petition.

7. Though the learned counsel for the petitioner submitted that earlier when the Officials of the Madurai Corporation had taken action against the petitioner to evict from the disputed property, the petitioner obtained a judgment and decree in her favour in O.S.No.51 of 2011 on the file of the District Munsif Court, Madurai and hence, the present impugned notice has been issued by the respondent only at the instigation of the Officials of the Madurai Corporation and it is the submission of the learned counsel for the respondent that the respondent herein is the proper authority to issue notice to the petitioner with regard to the encroachment made by the petitioner.

8. It is the specific case of the respondent that the petitioner has encroached the "Avaniyapuram Tank Poramboke" and hence there cannot be any impediment to issue notice to the petitioner. But at the same time, the impugned notice has been issued straightaway to the petitioner to evict her from the disputed property, within a period of 21 days.

9. In my considered opinion, when the petitioner is having a judgment and decree in his favour, before initiating action, the respondent ought to have called for explanation from the petitioner. But, in this case, it has not been done. Therefore, I am of the considered view that the impugned notice is liable to be set aside and an appropriate direction should be given to the respondent to afford an opportunity of hearing to the petitioner.

7. In the result, the Writ Petition is allowed and the impugned notice, dated, 29.05.2015, is set aside. No Costs. The respondent is directed to issue fresh notice, within a period of four weeks from the date of receipt of a copy of this order, calling for the petitioner to submit her explanation and on receipt of the same, the petitioner shall submit her explanation within a period of two weeks thereafter and on receiving such explanation, the respondent is directed to afford an opportunity of personal hearing to the petitioner and pass appropriate orders on merits and in accordance with law, within a period of four weeks thereafter. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To
The Assistant Engineer,
Public Works Department/Water resource organization,
Vaigai Section, Periyar Vaigai Basin Sub-Division No.II, Madurai-2.

+1cc to Mr. M.Rajaraman, Advocate SR.No.47290

+1cc to The Special Government Pleader, Madurai. SR.No.47784

W.P(MD).No.8879 of 2015

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