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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.03.2016

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

W.P (MD) No.2907 of 2015
and
M.P.(MD) Nos. 1 to 3 of 2015

Usha Latha .. Petitioner

Versus

1.The District Collector
Thoothukudi District
Thoothukudi.

2.The Tahsildar,
Sattankulam Taluk,
Thoothukudi District.

3.The Commissioner,
Sattankulam Panchayat Union,
Sattankulam,
Thoothukudi District.

4.Sasi Sivanatham,
Commissioner,
Sattankulam Panchayat Union,
Thoothukudi District.

5.Athilingaraj .. Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned letter vide A2/3077/2014, dated 18.02.2015 issued by the 3rd respondent and quash the same as void, unlawful and illegal and thereby directing these respondents 1 to 3 to follow as per the contemplated provision of law, rule and judgement in matter of encroachment eviction and pass such other orders.

For Petitioner : Mr.F.X.Eugene
For Respondents : Mr.S.Kumar
Additional Government Pleader for RR1 and 2
For Respondents : No appearance for RR3 to 5

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ORDER

This Writ Petition has been filed challenging the letter dated 18.02.2015 issued by the third respondent and for a consequential direction to the respondents 1 to 3 to follow the procedures contemplated under law before resorting to proceed with eviction of his land.

2. The petitioner claims that she has purchased the lands in Survey No. 475/1B and 479/3E in Naduvakurichi Village, in Sattankulam Taluk by means of a registered sale deed dated 26.09.2011 and he is in possession of the said land. According to the petitioner, the fifth respondent, by using his political influence, is attempting to interfere with his property by making a false claim that a pathway is running in the middle of the above said property and it was encroached by her. On the basis of the said complaint, the third respondent has issued the impugned communication calling upon the petitioner to remove the encroachment without following the procedures contemplated under law.

3. When the matter is taken up for hearing, the learned Additional Government Pleader appearing for the respondents 1 and 2 has drawn the attention of this Court to paragraph No.5 and 11 of the counter affidavit filed by the third respondent which reads as under:

> "5.It is submitted that the petitioner by relying on registered sale deed executed in respect of Survey No.475/1B and 479/3E contest the present case. It is pertinent to state here that the issue involved in the present writ petition is that as to whether any encroachment in survey No.479/2, at Naduvakurichi Village, Sattankulam Taluk, Thoothukudi District, is made or not. The petitioner and other 3 individuals had encroached the property in survey No.479/2, which has been specifically assigned in the revenue records and village records as government poramboke (cart pathway).
>
> ...
>
> 11.It is submitted that in fine, the encroachment process has been initiated only in respect of Survey No.479/2 and it is not against the properties in Survey No.475/1B and 479/3E. But the petitioner wrongly projected before this Hon'ble Court as if the authorities are trying to remove him from his property in Survey No.475/1B and 479/3E and that is the reason why, he has annexed the relevant sale deeds. Anyway, the present writ petition has been filed on various grounds including jurisdiction point and principle of natural justice. The petitioner is also relying on full bench judgment reported in 2005(2)CTC 741 and also relying on principles of 'Audi Altem Partem'."

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4. It is clear from the above averments in the counter affidavit that the respondents have initiated proceedings for removal of the encroachments made in the land in Survey No. 479/2 and not over the lands said to have been purchased by the petitioner in Survey No. 475/1B and 479/3E. It is also seen from the affidavit filed in support of the writ petition that the petitioner has specifically contended that encroachment proceedings have been initiated in respect of the lands purchased by her, which is not correct. Even other wise, the impugned communication is only a notice calling upon the petitioner to submit her explanation within a period of fifteen days from the date of receipt of the same and it was not a final order. Therefore, the apprehension of the petitioner is unfounded as the notice clearly states that proceedings are initiated only against the lands in Survey No.479/2 which is admittedly a poromboke land. Further, it is also stated in the counter that it is a cart pathway and the third respondent is the competent person to take necessary action for removal of any encroachment made therein. If the petitioner has encroached the land in Survey No. 479/2, it is needless to mention that she shall be evicted after following the due process of law. It is also to be mentioned that before initiating proceedings for removal of encroachment of the land, the petitioner has been duly informed by the communication dated 18.02.2015, which is impugned in this writ petition. In such view of the matter, the Writ Petition as such is not maintainable. Therefore, this Court finds no reason to interfere with the impugned communication dated 18.02.2015 of the third respondent

5. In view of the above, no further order is required to be passed in this writ petition. The Writ Petition is accordingly closed. No costs. Consequently, the connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1.The District Collector,
Thoothukudi District,
Thoothukudi.

2.The Tahsildar,
Sathankulam Taluk,
Thoothukudi District.

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3.The Commissioner,
Sattankulam Panchayat Union,
Sattankulam,
Thoothukudi District

+1 cc to MR.F.X.ENGENE, Advocate SR.No.11813

+1 cc to Special Government Pleader SR.No.11847

WP (MD) No.2907 of 2015
01.03.2016

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