



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.(MD) No.19004 of 2016

and

W.M.P.(MD) Nos.13729 & 13730 of 2016

P.Devi

... Petitioner

-vs-

The Tahsildar
Peravoorani Taluk
Thanjavur

... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus calling for the records pertaining to the impugned notice issued by the respondent herein, dated 24.08.2016, and quash the same and consequently direct the respondent not to dispossess the petitioner from his property bearing survey No.202/25 of Nattankottai Village, Peravoorani Taluk, Thanjavur District.

For Petitioner : Mr.R.Venkateshwar

For Respondent : Mr.A.Muthukaruppan, A.G.P.

O R D E R

[Order of the Court by M.SATHYANARAYANAN, J.]

Mr.A.Muthukaruppan, learned Additional Government Pleader, accepts notice on behalf of the respondent and with the consent of both sides, this writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner claims that the ryotwari land, comprised in Survey No.202/2 of Nattankottai Village, Peravoorani Taluk, Thanjavur District, admeasuring to an extent of 30 Cents, was originally belonged to one Veerayyan and he sold an extent of 25 Cents to one Karuppan, who sold an extent of 8 ¼ Cents to one Nallathambi, who obtained planning permission from the Peravoorani Special Grade Panchayat for putting up a superstructure and accordingly he constructed a house thereon and sold the said property to the petitioner and right from the date of purpose, she is in possession and enjoyment of the said property. It is not clear from the affidavit that whether the sale deed executed in favour of the petitioner was registered or not?



3. The petitioner would further claim that she has also obtained an Assignment Patta, dated 12.06.2012, from the respondent in respect of the said land and as per the Assignment Patta, the new survey number of the land is 202/25 and despite that, on 17.08.2016, the respondent issued a notice to her, under Section 7 of Tamilnadu Encroachment Act, 1905 (hereinafter, it may be referred to as "the Act") and the same was challenged by her and one Jesintha Mary, before this Court, by filing writ petitions, in W.P.(MD) Nos.16603 and 16604 of 2016 and this Court, by a common order dated 01.09.2016, has passed the following order:

"2. It is not in doubt that the Tahsildar has issued a show cause notice under Section 7 of the Land Encroachment Act, 1905 and therefore, we cannot assume that the Tahsildar without passing orders, containing necessary reasons to deal with the objections raised by the petitioners, under Section 6 would seek to evict the petitioners.

3. We make it very clear that the respondent shall take necessary steps and action only upon passing an order under Section 6 of the Act and communicate the same and also give a reasonable time for the petitioners to retrieve their belongings therefrom before they are evicted therefrom. Till an appropriate order passed under Section 6 and communicated to the petitioners, the petitioners shall not be evicted. However, under the guise of this order, the petitioners shall also not make further encroachments.

4. The writ petitions are disposed of accordingly. No costs. Consequently, W.M.P.(MD) Nos.12091, 12092, 12093 and 12094 of 2016 are closed."

4. Thereafter, the respondent has issued the present impugned notice, dated 24.08.2016, under Section 6 of the Act, calling upon her to evict from the possession of the land in Survey No.202/2, on or before 07.10.2016, failing which they would forcibly evict her from the possession of the said land and challenging the legality of the same, she has filed this writ petition.

5. Mr.R.Venkateshwar, learned counsel appearing for the petitioner, would submit that subsequent to the assignment, the land in Survey No.202/2 has been sub-divided as 202/25 and it has been wrongly classified as "அனுதீனம்" and once the land is assigned, the possession of the assignee cannot be treated as an encroachment and therefore, the learned counsel prays for interference of this Court.



6. Mr.A.Muthukaruppan, learned Additional Government Pleader appearing for the respondent, would submit that it is not clear from the affidavit, filed in support of the writ petition, as to the nature of the purchase made by the petitioner and insofar as the claim made by her that the land in Survey No.202/2 has been subdivided as 202/25 is concerned, it involves factual adjudication and the petitioner is very well having an effective appeal remedy under Section 10 of the Act and hence prays for dismissal of the writ petition.

7. This Court has carefully considered the rival submissions and perused the materials produced.

8. On going through the materials produced, this Court is of the considered view that the petitioner is having an effective appeal remedy under Section 10 of the Act, and the subdivision of the land in question as well as its classification cannot be gone into by exercising Article 226 of the Constitution of India and hence the writ petition deserves dismissal.

9. In the result, the writ petition is dismissed and the petitioner is given liberty to prefer an appeal, challenging the impugned notice, dated 24.08.2016, issued by the respondent, before the Collector, Thanjavur District, within a period of two weeks from the date of receipt of a copy of this order and in the event of filing such appeal by the petitioner, the Collector, Thanjavur District or the Officer concerned, authorised by him, shall entertain the appeal, if the papers otherwise in order, and dispose of the same in accordance with law, within a period of eight weeks thereafter. The respondent shall defer further proceedings of the impugned notice, dated 24.08.2016, till the filing of appeal by the petitioner, as stated above. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/
Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar.

To:

The Tahsildar, Peravoorani Taluk, Thanjavur.
+1CC to M/S.R.Venkateshwar, Advocate, SR.No. 57866
+1CC to the Special Government Pleader, SR.No. 57781

W.P.(MD) No.19004 of 2016

and

W.M.P.(MD) Nos.13729 & 13730 of 2016