

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.11.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

WP.No.30399/2017 & WMP.Nos.33142 & 33143/2017

R.Malarkodi

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Petitioner

Versus

1.The District Collector,
Ariyalur, Ariyalur District.

2.The Block Development Officer
[Panchayat], Andimadam,
Andimadam, Ariyalur District.

3.The Tahsildar
Andimadam, Andimadam Taluk
Ariyalur District.

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Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus calling for the records in relation to the proceedings of the 2nd respondent in Na.Ka.Aa/2217/2017 dated 14.11.2017 and quash the same and consequently direct the respondents to issue patta to the petitioner in Survey No.150, to the extent of 0.39.5 Acres in Kodukkur Village, Andimadam Taluk, Ariyalur District, based on the petitioner's representation dated 17.07.2017.

For Petitioner : Mr.V.Kasinatha Bharathi
For RR1 & 3 : Mr.M.Digvijaya Pandian, AGP
For R2 : Mr.P.Gunasekaran, AGP

ORDER

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

By consent, the writ petition is taken up for final disposal. Mr.M.Digvijaya Pandian, learned Additional Government Pleader accepts notice on behalf of the respondents 1 and 3 and Mr.P.Gunasekaran, learned Additional Government Pleader accepts notice on behalf of the 2nd respondent.

2 The petitioner claims to be in possession of the land admeasuring to an extent of 0.39.5 Ares comprised in S.No.150 and the superstructure thereon bearing No.629 of Kodukkur Village and according to the petitioner, the said property is also subjected to all statutory levies and she is in possession and enjoyment of the same for quite a long time. The petitioner would further aver that earlier, an attempt was made to dispossess her without having recourse to due process of law and therefore, she filed OS.No.268/2003 on the file of the Court of the District Munsif, Jayamkondam, against the Collector of Perambalur District, the

Revenue District Officer, Udayarpalayam, Tahsildar, Jayamkondam, President of the Local Body and also against a private individual, praying for permanent injunction restraining them from interfering with her peaceful possession and enjoyment of the said property and pending disposal of the same, filed IA.No.476/2003, praying for an order of ad-interim injunction and it was granted. The petitioner, by virtue of her long possession and enjoyment, also approached the concerned revenue authorities for grant of patta and it is yet to be considered and however, to her shock and surprise, she has been issued with the impugned notice dated 14.11.2017 by the 2nd respondent, stating among other things that she is in occupation of the land admeasuring to an extent of 0.02.02 Ares and 0.03.5 Ares respectively in S.Nos.56 and 150 which are classified as "lake" and "Government Poramboke Cart Track" and challenging the legality of the same, she came forward to file the present writ petition.

3 The learned counsel for the petitioner has invited the attention of this Court to G.O.Ms.No.540, Revenue [LD 6[2]] Department, dated 04.12.2014 and would submit that the said Government Order gives general guidelines as to the redressal of the grievance and as per the

general procedure contemplated for removal of encroachment on the Government land, a statutory duty is cast upon the concerned official respondents to follow the provisions of the Tamil Nadu Land Encroachment Act, 1905 and without invoking the general provision, a general order has been passed calling upon the petitioner to remove the encroachment forthwith and hence, prays for interference.

4 *Per contra*, Mr.M.Digvijaya Pandian, learned Additional Government Pleader appearing for the respondents 1 and 3 and Mr.P.Gunasekaran, learned Additional Government Pleader appearing for the 2nd respondent would submit that due process of law is being followed for removal of encroachment especially in water body and prays for dismissal of the writ petition.

5 This Court has considered the rival submissions and also perused the materials placed before it.

6 As per the above cited Government Order, for removal of encroachment, formation of various Committees have been put in place to dispose of the grievances relating to eviction and encroachment in the

Government land and it is relevant to extract the general procedure:-

"[i] General Procedure:- *In general, as per section 7 of Tamil Nadu Land Encroachment Act, 1905, before taking proceedings, the Collector or Tahsildar shall cause to serve on the person a notice calling upon him to show cause why he should not be evicted. Further as per notice under section 6 of the Tamil Nadu Land Encroachment Act, 1905, any person unauthorisedly occupying any land may be summarily evicted by the Collector, Tahsildar, Deputy Tahsildar [or any other officers authorised by the State Government in this regard] by serving such notices in the manner prescribed under section 25 of Tamil Nadu Revenue Recovery Act, 1864."*

7 A perusal of the impugned order would disclose that for the removal of encroachment, the provisions, viz., sections 7 and 6 of the Tamil Nadu Land Encroachment Act, 1905, or the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2003 [if required], have not been followed at all and an *omnibus* notice came to be issued calling upon the petitioner to remove the encroachment forthwith and since the mandate cast upon the concerned respondent in terms of the above said statutory provisions has not been followed, this

court is of the considered view that the impugned notice warrants interference.

8 In the result, the writ petition is partly allowed and the impugned notice dated 14.11.2017 issued by the 2nd respondent in Na.Ka.No.Aa/2217/2017 is quashed and the respondents are at liberty to invoke appropriate provisions of law for removal of the encroachments after putting the petitioner and other encroachers, if any, on notice and the said exercise is to be carried out within a period of ten weeks from the date of receipt of a copy of this order and the decision in that regard, shall be communicated to the petitioner as well as to the other encroachers, if any. No costs. Consequently, the connected miscellaneous petitions are closed.

सत्यमेव जयते

[MSNJ] [SPIJ]
24.11.2017

Internet : Yes

AP

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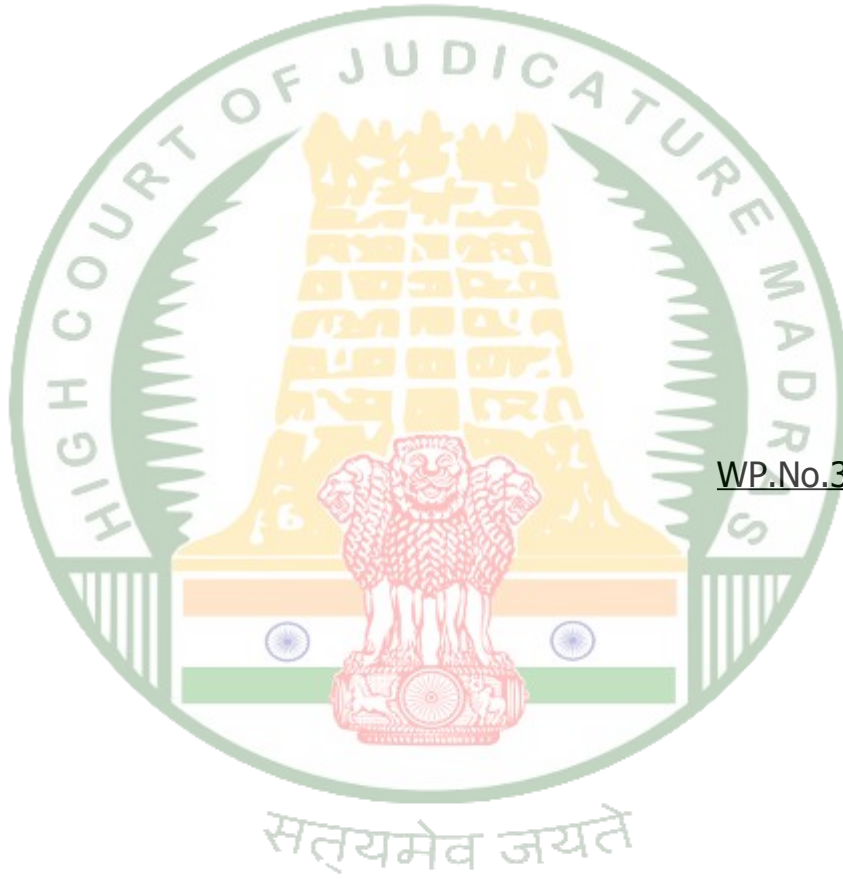
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