

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:25.07.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE N.SESHASAYEE

W.P.No.12815/2017 & WMP.No.13668/2017

M.Kandhamani

..Petitioner

Vs

- 1.The District Collector
Namakkal District.
- 2.The Revenue Tahsildar
Taluk Office, Komarapalayam.
- 3.The Commissioner
Komarapalayam Municipality
Komarapalayam, Namakkal District.
- 4.The Assistant Engineer, PWD, WRD,
Mettur Canal Section,
Komarapalayam, Namakkal District.

.. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorari calling for the records pertaining to the impugned notices dated 12.07.2016 in Na.Ka.No.A2/3400/2014 respectively issued by the 3rd respondent and impugned notice dated 05.05.2017 in Form III [Sub-Rule [1] of Rule 6] issued by the 4th respondent and quash the same.

For Petitioner : Ms.M.Thanu
For RR1 to 4 : Mr.A.N.Thambidurai, Spl.GP

ORDER

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

By consent, the writ petition is taken up for final disposal.

2 The petitioner in the affidavit filed in support of this writ petition would claim that he was the owner of the

property admeasuring to an extent of 9.56 acres [Pymash No.126A], present Natham Survey No.169, Block No.5, Ward No.D, Patta No.12808, situate at Komarapalayam Agraharam Village, Namakkal District through a registered Sale Deed dated 12.08.1983 bearing Doc.No.1649/1983 and subsequently, had settled the said property in favour of his son, viz., M.Dinakaran, through a Settlement Deed dated 23.11.2015 bearing Doc.No.7346/2015. The grievance expressed by the petitioner is that the 3rd respondent had issued the impugned notice dated 12.07.2016 under sections 182, 313, 338, 340, 344 of the Tamil Nadu District Municipalities Act, 1920, alleging that the petitioner has encroached upon the water course and road margin and hence, called upon the petitioner to remove the encroachment within a period of three days from the date of receipt of the said notice, failing which, further action under the provisions of the said Act will be taken and challenging the legality of the same as well as Form III, issued under sub-rule [1] of Rule 6 dated 05.05.2017, the petitioner came forward to file the present writ petition.

3 Ms.M.Thanu, learned counsel appearing for the petitioner would submit that the petitioner has traced her title at least from the year 1983 and through a registered Settlement Deed dated 23.11.2015, has settled the property in favour of her son and the impugned notice is also bereft of any material particulars and apart from the impugned notice, the petitioner has also been issued with Form III notice under the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 and the rules framed thereunder and in response to both the notices, she has submitted a detailed response/representation dated 12.05.2017 and though the said representation was received and acknowledged by the respondents 3 and 4, they are proceeding further to dispossess the petitioner and hence, the petitioner prays for appropriate orders.

4 Per contra, Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents would submit that since the petitioner had encroached upon the water course as well as the road margin, action has been rightly taken under the provisions of the Tamil Nadu District Municipalities Act, 1920 as well as under the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 and the Rules framed thereunder and prays for dismissal of this writ petition.

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

6 It is the categorical stand of the petitioner that her title is traced at least from the year 1983 in the form of Sale Deed and thereafter, settled the property in question in favour of her son through a registered Settlement Deed dated 23.11.2015 and she has got tenable ground to resist the claim of the respondents 3 and 4.

7 This Court, in the light of the above facts and circumstances and without going into the merits of the claim projected by the petitioner in her representation, directs the respondents 3 and 4 to give an opportunity of personal hearing to the petitioner by specifying the date and thereafter consider and dispose of the petitioner's representation dated 12.05.2017 on merits and in accordance with law and pass appropriate orders in accordance with law within a period of eight weeks from the date of receipt of a copy of this order and till such time, shall defer further decision in terms of the impugned notices dated 12.07.2016 and 05.05.2017 respectively.

8 The writ petition stands disposed of with the above direction. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

AP

To

1. The District Collector
Namakkal District.
2. The Revenue Tahsildar
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3. The Commissioner
Komarapalayam Municipality
Komarapalayam, Namakkal District.

4. The Assistant Engineer, PWD, WRD,
Mettur Canal Section,
Komarapalayam, Namakkal District.

+1cc to Mr.Marudachalamurthy, Advocate Sr. 52697
+1cc to the Government Pleader Sr. 53337

WP.No.12815/2017

MG (CO)
VR(18/8/2017)



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