

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.08.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

WP.No.22549/2017 & WMP.Nos.23678 & 23679/2017

M.Indira

Petitioner

Versus

1. The State of Tamil Nadu
rep.by its Secretary to Government
Municipal Administration & Water
Supply Department, Fort St George
Chennai 600 009.
2. The Commissioner
Udumalaipet Municipality
Udumalaipetai.
3. The Tahsildar
Udumalaipetai Taluk,
Tiruppur 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 of the 2nd respondent in Na.Ka.No.516/2016/F1 dated 07.08.2017 and quash the same.

For Petitioner : Mr.M.Sivarathanan

For RR 1 & 3 : Mr.P.Sanjay Gandhi, AGP

For R2 : Mr.A.S.Thambuswamy

ORDER

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

By consent, the writ petition is taken up for final disposal. Mr.P.Sanjay Gandhi, learned Additional Government Pleader accepts notice on behalf of the respondents 1 and 3 and Mr.A.S.Thambuswamy, learned counsel accepts notice on behalf of the 2nd respondent.

2 The petitioner, on an earlier occasion, had approached this Court by filing WP.No.21000/2017, praying for issuance of a writ of mandamus, forbearing the 6th respondent therein / 2nd respondent herein from laying road in the petitioner's patta lands in TS.No.16, admeasuring to an extent of 5.5 cents ; TS.No.3 [part] admeasuring to an extent of 2 cents ; TS.No.17 [part], admeasuring to an extent of 1004 sq.ft ; TS.No.15 [part] admeasuring to an extent of 1080 sq.ft. and TS No.3 [part] admeasuring to an extent of 1258 sq.ft. at Block No.F, Ward 3 of Udumalpet Town, situate at Door No.35A and 35A1, Kabburkhan Street, Udumalpet without following due process of law.

3 A Single Bench of this Court, after taking into consideration the rival submissions, has disposed of the said writ petition on 07.08.2017 and it is relevant to extract paragraph No.6, which reads thus:-

"6 Having regard to the submissions made by the learned counsel on either side and recording the submissions made by the learned counsel for the sixth respondent, I make it clear that the sixth respondent shall take action against the petitioner in accordance with law in the case of the petitioner encroaching the land belonging to the sixth respondent. However, the petitioner shall not prevent the sixth respondent from surveying the land of the petitioner to ascertain the actual extent of the property encroached by the petitioner."

4 A perusal of the above order would also indicate that the learned Standing Counsel appearing for the 2nd respondent herein on instructions, made a submission that they will issue notice to the petitioner informing the date of survey before surveying the petitioner's land.

5 Thereafter, the 2nd respondent herein has issued the notice dated 07.08.2017 under section 56 and 56 of the Tamil Nadu Town and Country Planning Act, 1971 read with section 325 of the Tamil Nadu District Municipalities Act, 1920, calling

upon the petitioner to produce three documents within fifteen days from the date of receipt of the notice, failing which, action under the said provisions would follow and challenging the legality of the same, the present writ petition is filed.

6 The learned counsel for the petitioner would submit that invocation of the provisions of the Tamil Nadu District Municipalities Act, 1920, and the Tamil Nadu Town and Country Planning Act, 1971, is not at all sustainable and the 2nd respondent herein has pre-judged the issue and apprehending dispossession, the petitioner is constrained to approach this Court by filing the present writ petition.

7 This Court heard the submissions of Mr.P.Sanjay Gandhi, learned Additional Government Pleader appearing for the respondents 1 and 3 and Mr.A.S.Thambuswamy, learned Standing counsel appearing for the 2nd respondent and also perused the materials placed in the form of typed set of documents filed along with the writ petition.

8 In the considered opinion of the Court, the order dated 07.08.2017 made in WP.No.21000/2017 would take care of the petitioner's interest and the impugned notice would indicate that in the event of the petitioner not producing the three documents as required, then only action under the above said provisions would follow.

9 Therefore, this Court is of the view that the writ petition is premature and the petitioner is at liberty to respond to the impugned notice within a period of fifteen days from the date of receipt of a copy of this order and upon receipt of the same, the 2nd respondent is directed to consider the same on merits and in accordance with law and pass appropriate orders as expeditiously as possible.

10 The writ petition stands disposed of with the above observations and direction. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

AP

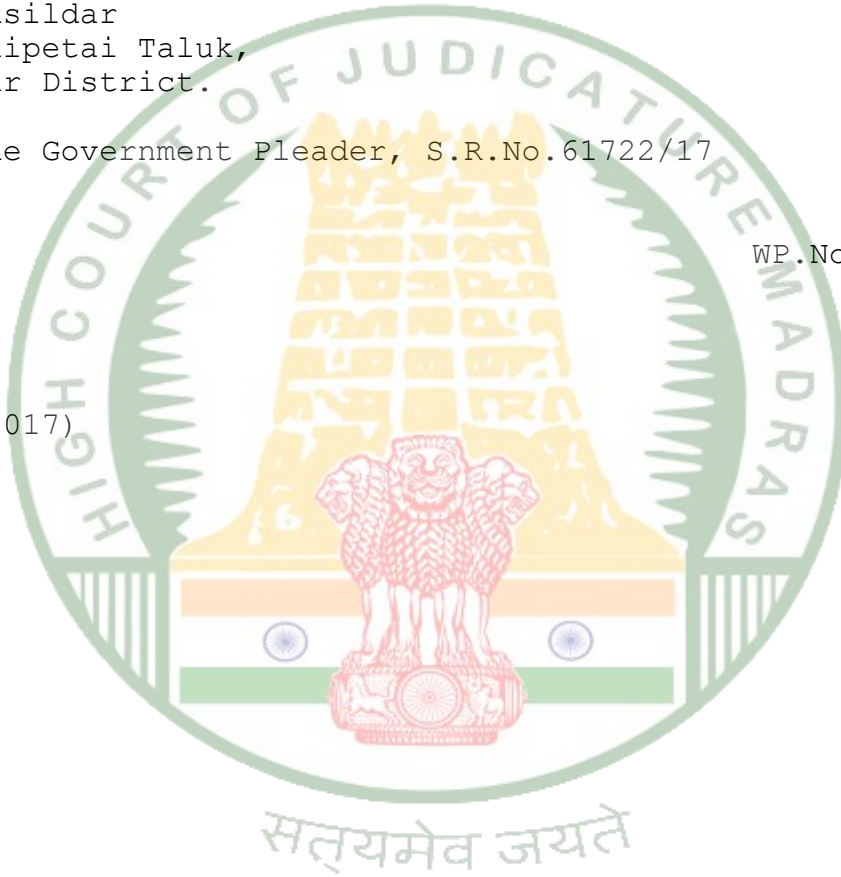
To

1. The Secretary to Government
State of Tamil Nadu
Municipal Administration & Water
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+1cc to the Government Pleader, S.R.No.61722/17

WP.No.22549/2017

AR(CS IV)
CU(29/08/2017)



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