

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.09.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

WP.No.24435/2017

Kannammal

..

Petitioner

Versus

1.The District Collector
Krishnagiri District.

2.The Tahsildar
Uthangarai Taluk
Krishnagiri District.

..

Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records in connection with the notice under section 6 of the Land Encroachment Act, 1905, issued by the 2nd respondent dated 21.08.2017 and quash and consequently direct the 2nd respondent to issue patta to the petitioner to an extent of 0.50 cents in comprised in Survey No.171/1 an extent of 0.30 cents and in Survey No.171/3 and extent of 0.20 cents, Thiruanapatti village, Uthagarai Taluk, Krishnagiri District.

For Petitioner : Mr.K.Thiruvengadam

For Respondents : 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. Mr.A.N.Thambidurai, learned Special Government Pleader accepts notice on behalf of the respondents.

2 It is the claim of the petitioner that the property admeasuring to an extent of 1 acre 51 cents comprised in S.No.171/2A in Thiruvanapatti village, Uthagarai Taluk, Krishnagiri District, belongs to her absolutely and the land admeasuring to an extent of 0.30.0 Hectares in Survey No.171/1 situate in the same village, is a Government Poramboke and it is also in possession of the petitioner and her husband for very many years and both of them are carrying on agricultural operations. The petitioner would further aver that to her shock and surprise, she was issued with a notice under section 7 of the Tamil Nadu Land Encroachment Act, 1905, alleging that she is an encroacher of the land admeasuring to an extent of 0.50.5 acres in S.No.171/1 and 3 classified as "Oni Poramboke" and "Salai Poramboke" situate at Thiruvanapatti Village, for which the petitioner has submitted her detailed representation dated 09.08.2017 to the 2nd

respondent and the 2nd respondent, without taking cognizance of the same, has issued the impugned notice under section 6 of the said Act and challenging the legality of the same, the petitioner is before this Court by filing the present writ petition.

3 The learned counsel for the petitioner would submit that the petitioner has also filed a suit in OS.No.17/2017 on the file of the Court of District Munsif-cum-Judicial Magistrate, Uthangarai, against the respondents 1 and 2 and other revenue officials as well as against one Kaliyappan, praying for permanent injunction restraining the defendants therein from interfering with the peaceful possession and enjoyment of the petitioner in respect of both items of property and she is not having the benefit of any interim order and despite pendency of the suit in which the 2nd respondent is a defendant, the said official is proceeding further and therefore, prays for appropriate orders.

4 *Per contra*, Mr.A.N.Thambidurai, learned Special Government Pleader would submit that even as per the own admission of the petitioner the land in S.No.171/1 is classified as Government Poramboke and since the petitioner is having an effective alternate remedy under section 10 of

the Act, the writ petition is not maintainable.

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

6 In the considered opinion of the Court, the petitioner is having an effective alternate remedy under section 10 of the Tamil Nadu Land Encroachment Act, 1905, and pending disposal of the appeal, the petitioner may move for stay under section 10-B of the said Act.

7 In the light of the effective alternate remedy, this Court is of the view that the writ petition is not maintainable for the present. However, the petitioner is at liberty to file an appeal under section 10 of the Tamil Nadu Land Encroachment Act, 1905, along with a petition for stay under section 10-B of the said Act to the Appellate Authority within a period of four weeks from the date of receipt of a copy of this order and till such time, the respondents shall defer further proceedings in terms of the impugned notices under sections 7 and 6 of the said Act dated 08.08.2017 and 21.08.2017 respectively. The Appellate Authority shall entertain the appeal, if the papers are otherwise in order and the said

official is at option either to take up the petition for stay at the earliest or the main appeal itself and after following due process of law, give a disposal on merits and in accordance with law within a further period of eight weeks thereafter and communicate the decision taken, to the petitioner.

8 The writ petition stands dismissed subject to the above observation. No costs.

[M.S.N., J.] [N.S.S., J.]
12.09.2017

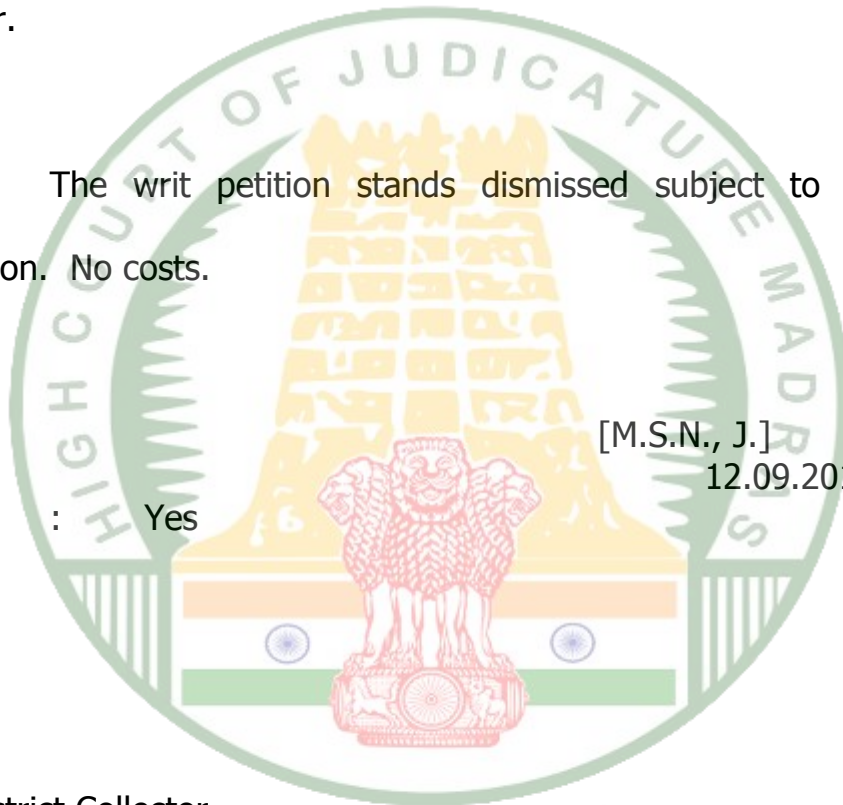
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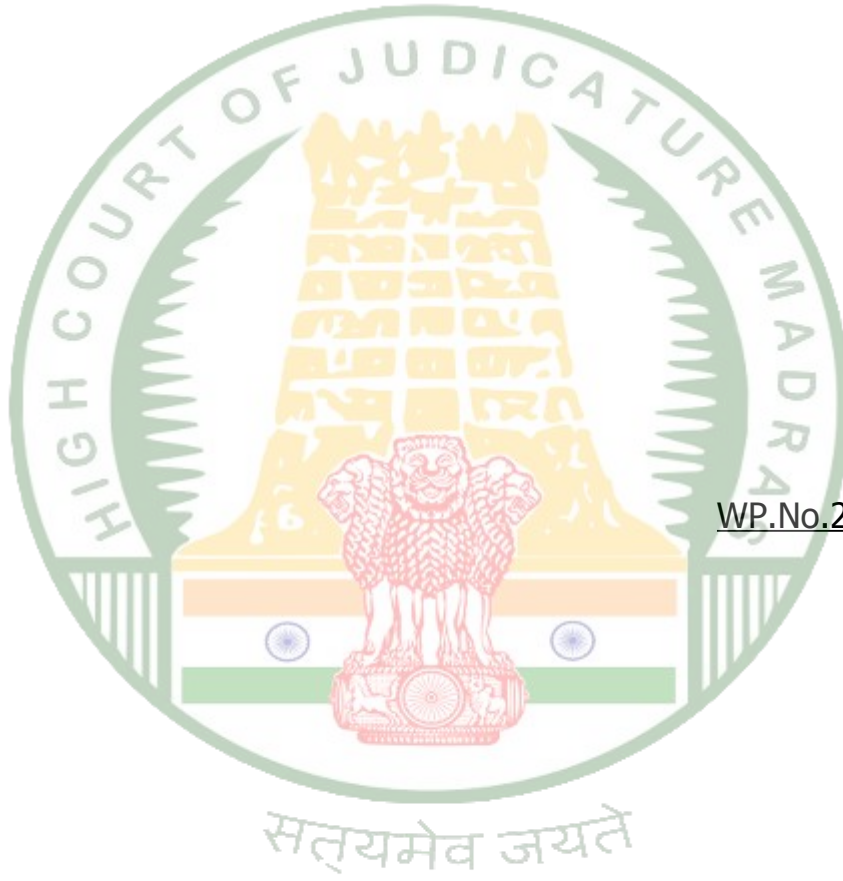
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