

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.24441/2017 & WMP.Nos.25826 & 25827/2017

K.Maniammal

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Petitioner

Versus

1.The District Collector
Salem District.

2.The Tahsildar
Salem West, Suramangalam
Salem.

3.The Commissioner
Salem Corporation, Salem.

4.The Assistant Commissioner
Suramangalam Ward Office
Salem Corporation, Suramangalam
Salem.

5.S.Seetha

..

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 pertaining to the notice made in Na.Ka.No.K21/3537/2017 dated 01.09.2017 passed by the 4th respondent and quash the same and

consequently forbearing the 4th respondent from removing the compound wall constructed by the petitioner comprised of TS.No.3, situated at Division No.18, Arumugam Colony, Kasakanoor, Salem Corporation, Salem, except under due process of law.

For Petitioner : Mr.A.Nagarathinam
For RR 1,2, 4 : Mr.A.N.Thambidurai, Spl.GP
For R3 : Mrs.K.Bhuvaneswari

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 1, 2 and 4 and Mrs.K.Bhuvanesawari, learned standing counsel accepts notice on behalf of the 3rd respondent.

2 The 5th respondent, on an earlier occasion, had approached this Court by filing WP.No.17089/2017 against the respondents 1 to 3 as well as the writ petitioner herein, praying for issuance of a writ of mandamus directing them to consider her Original Petition dated 04.04.2017 filed by her before the 2nd respondent, as per G.O.Ms.No.540, Revenue [LD-6[2]] Department, dated 04.12.2014, for removal of encroachment in the sewage canal by the 4th respondent, viz., K.Maniammal – petitioner herein and consequently, to direct the

respondents 2 and 3 to remove the compound wall constructed on the sewage canal by the 4th respondent, by way of encroachment and to clear the blocked drainage line comprised in Survey TS.No.3, in Ward-A, Block-77 to restore the link of the said drainage line with the main drainage system comprised in Survey TS.No.3, Ward-A, Block-77 within the limits of the Corporation of Salem, and a Division Bench of this Court, vide order dated 06.07.2017, had disposed of the said writ petition and it is relevant to extract paragraphs No.7 and 8:-

"7 Though the petitioner prays for a larger relief, this Court, in the light of above facts and circumstances, directs the 3rd respondent to put the 4th respondent on notice and taking into consideration, G.O.[Ms] No.540, Revenue [LD.6[2]] Department, dated 04.12.2014, shall consider and dispose of the petitioner's representation dated 04.04.2017 on merits and in accordance with law and pass orders within a period of eight weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner as well as to the 4th respondent herein.

8 The writ petition stands disposed of with the above direction. No costs."

3 The learned counsel for the petitioner would submit that the suit in OS.No.214/2002 on the file of the Court of the First Additional District Munsif, Salem, was filed by one Tr.P.L.Unnamalai and 4 others against the husband of the petitioner as well as the petitioner herein, praying for permanent and mandatory injunction and it was partly decreed and aggrieved by the same, the plaintiffs filed an appeal in AS.No.94/2003, in which, in the place of the first appellant, who was no more, the 6th respondent herein as well as one A.L.Lakshmi, came on record and the said suit is pending and in the light of the judgment and decree passed by the Civil Court, the 5th respondent has not right whatsoever and would further add that though this Court, in the order passed in WP.No.17089/2017 [referred to supra] has directed the Commissioner, Salem Corporation, to put the petitioner herein on notice and give a disposal in accordance with law, the said official has straightaway issued the impugned notice, calling upon the petitioner to vacate the said place in question within a period of two days from the date of receipt of the said notice and the same is unsustainable in law and prays for interference.

4 This Court heard the submissions of Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents 1, 2

and 4 and Mrs.K.Bhuvaneswari, learned Standing counsel appearing for the 3rd respondent and perused the materials placed before this Court.

5 A perusal of the impugned notice dated 01.09.2017 issued by the 4th respondent, in the considered opinion of this Court, is not in consonance with the direction given by this Court in the order dated 06.07.2017 made in WP.No.17089/2017. This Court in the above cited order, has not given any positive direction, directing the Corporation officials to evict the petitioner herein who was arrayed as 4th respondent therein and however, the 4th respondent herein has misconstrued the said order and has straightaway issued the eviction notice against the petitioner herein. The petitioner in response to the impugned notice dated 01.09.2017 has submitted is response on 04.09.2017.

6 This Court, in the light of the above facts and circumstances and without going into the merits of the claim projected, either by the petitioner or by the 5th respondent, directs the 4th respondent to treat the impugned notice dated 01.09.2017 as show cause notice, for which the petitioner is permitted to submit her additional response by enclosing necessary documents within a period of four weeks from the date of

receipt of a copy of this order and upon the receipt of the same, the 4th respondent shall put the 5th respondent on notice and thereafter, consider and dispose of the petitioner's representation dated 04.09.2017 and the further representation to be submitted on merits and in accordance with law and pass orders on merits and in accordance with law within a further period of six weeks thereafter and communicate the decision taken, to the petitioner as well as to the 5th respondent and till such time, shall defer further decision to evict / dispossess the petitioner.

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

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

Internet : Yes

AP

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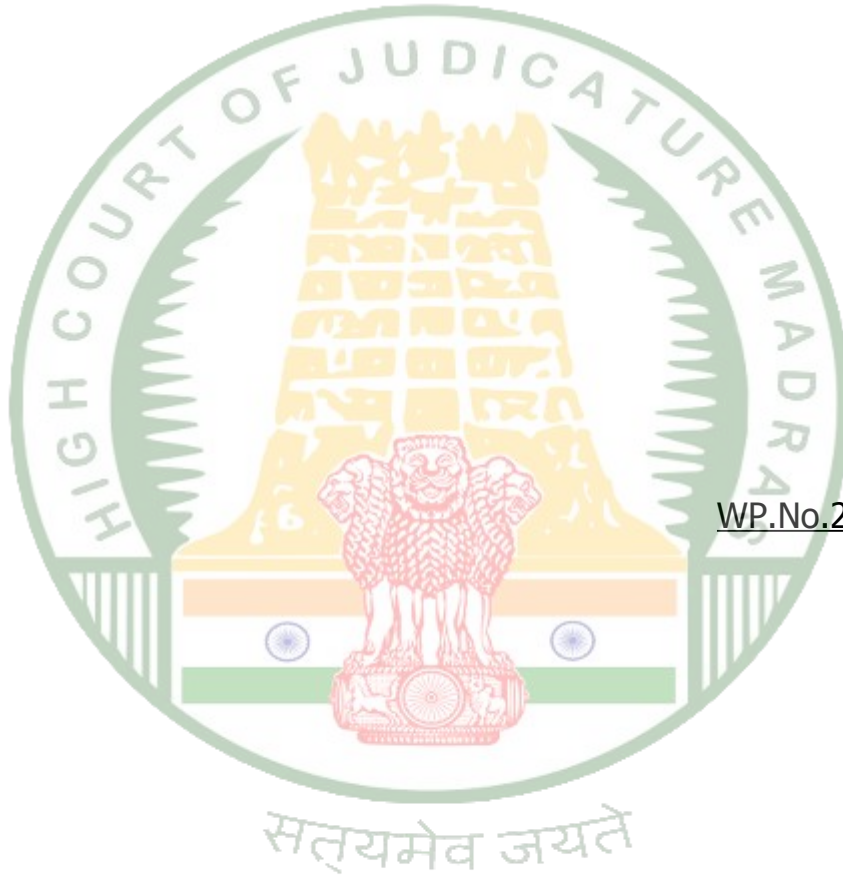
- 1.The District Collector
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- 4.The Assistant Commissioner
Suramangalam Ward Office
Salem Corporation, Suramangalam
Salem.
- 5.S.Seetha
D/o.R.M.Shanmugam
Door No.6/215, Arumugam Colony
Opp. Thiagarajar Polytechnic
Salem-5.

[Copy of the order marked to the 5th respondent
as per the order of this Court]

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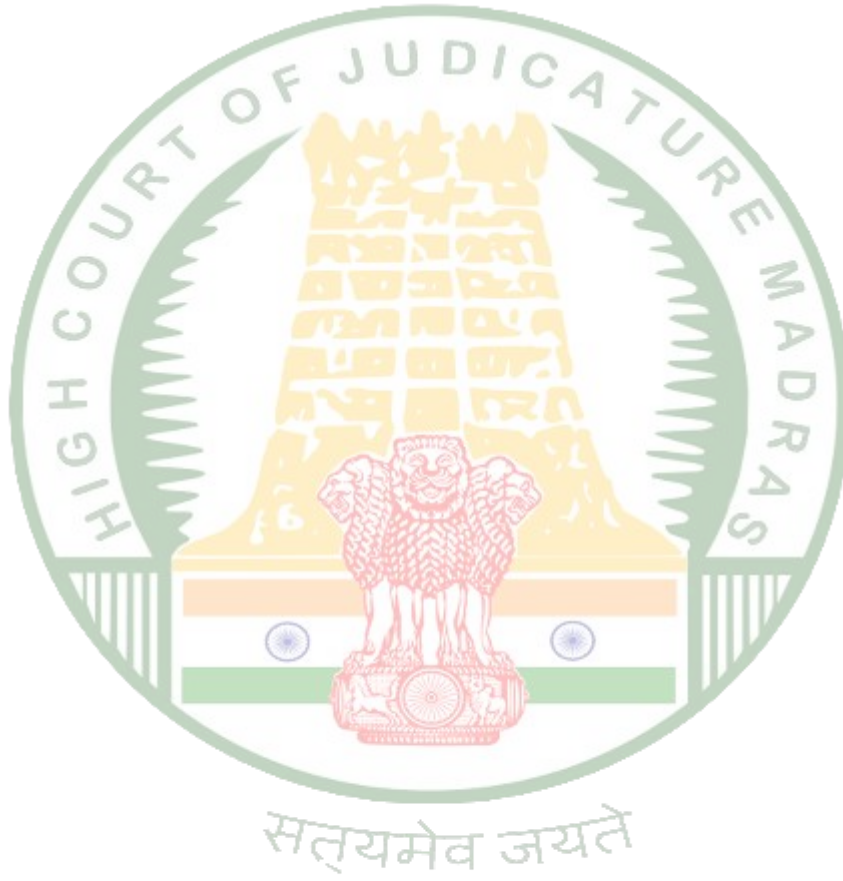
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