

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.07.2017

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

WP.No.17075/2017 and W.M.P.No.18551 and 18552/2017

P.Rajeshwari .. Petitioner

Versus

1.The Municipal Commissioner,
Thiruvannamalai Municipality,
Sannathai Street,
Thiruvannamalai.

2.The Special Officer,
Thiruvannamalai Municipality,
Sannathi Street,
Thiruvannamalai.

.. Respondents

PRAYER:- Writ petition filed under Article 226 of the Constitution of India prays to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned notice dated 12.06.2017 issued to the petitioner treating the petitioner as illegal occupier and quash the same and consequently direct the respondents to restore the petitioner to maintain land cite located in Kamatchi Amman Koil Street near famous Tea Stall admeasuring 12x12 fall within ward 3 of Tiruvannamalai Municipality as given permission in the resolution passed by the 2nd respondent dated 19.08.2015.

For Petitioner :Mr. A.K.Rajaraman
For Respondents :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.

2 The petitioner in the affidavit filed in support of this writ petition would aver among other things that the land located at ward No.8, division No.4, Kamatchi Amman Street near Famous Tea stall was lying vacant for many years and since it was vacant, it was used by very many anti social elements. The Tiruvannamalai Municipality has taken a fair stand to grant license to the petitioner to maintain the said place for the reason that it was misused by anti social element for carrying out illegal activities.

3 The petitioner, in pursuant of the resolution No.153 dated 19.08.2015 passed by the 2nd respondent, also took possession and started maintaining the said land. However to the shock and surprise, the petitioner was issued with the impugned notice under Section 182 (1) & (2) of the Tamil Nadu District Municipalities Act, 1920 stating among other things that she had put up superstructure admeasuring to an extent of 144

sq.ft in the form of encroachment and called upon her to vacate and remove the encroachment within two days from the date of receipt of the notice, failing which further action will be initiated under Section 313 of the said Act. Challenging the legality of the same, the petitioner has come forward to file this writ petition.

4 The learned counsel appearing for the petitioner has drawn the attention of this Court to the typed set of documents and would submit that as per the Resolution No.153 dated 19.08.2015, the President of Thiruvannamalai Municipality took a constant stand to give possession of land admeasuring to an extent of 12x12 144 sq ft in favour of petitioner for maintenance. Without issuing a show cause notice, straightaway order came to be passed alleging her possession as an encroacher and the contents of the impugned order are also is not in consonance with the above said Resolution against which she filed the present writ petition.

5 Mr.A.S.Thambuswamy, learned Standing counsel for the respondents has drawn the attention of this Court to the counter affidavit and would submit that at the time of passing Resolution, the husband of the petitioner was a Ward Councilor and he himself should not seconded

the said Resolution and even for the sake of arguments that the possession of the said land was in favour of the petitioner for the purpose of maintenance, she started putting up unauthorized construction and closed down the well used for drinking purpose for devotees at the time of Girivalam and taking note of the said facts only, the impugned proceedings came to be passed and since, the husband of the petitioner as well as the petitioner have misused the land and as such, the indulgence shown by the Local Body in removing the encroachment cannot be faulted with and hence, prays for dismissal of this writ petition.

6 This Court paid it's best attention to the rival submissions and also perused the materials placed before it.

7 On a perusal of the counter affidavit filed by the respondents 1 and 2 clearly reveal that the husband of the petitioner was a Councilor for relevant point of time and he himself seconded the Resolution No.153 dated 19.08.2015 granting license / entry upon permission to his wife to use the vacant land admeasuring to an extent of 144 sq. ft and it is also revealed that in the said land a well is located, and the water from this well shall be used for pilgrims during Girivalam (Pournami-full moon day).

However, the petitioner started putting up an unauthorized construction and the photograph produced before this Court by the learned standing counsel for the respondents would also disclose full fledged construction and a superstructure has been put up and later on it has been demolished. There is no denial of fact that the well was located in the said premises which was used by the devotees during Girivalam. Under the guise of putting up the construction, the petitioner had tried to close down the said well. In the considered opinion of this Court, the action taken by the 2nd respondent is perfectly in order and in accordance with law and therefore, it cannot be faulted with. This Court on careful appreciation and consideration of the materials placed and submissions is of the considered view that this writ petition lacks merits and substances and deserves dismissal.

6 In the result, the Writ Petition is dismissed. No costs.

Consequently, the connected miscellaneous petitions are also dismissed.

[M.S.N.,J] [N.S.S., J]
26.07.2017

Index : No
Internet : Yes

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M.SATHYANARAYANAN.,J,

and

N.SESHASAYEE.,J,

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To

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