

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2017

CORAM

THE HONOURABLE Mr.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

W.P.No.27505 of 2017
and WMP.No.29401 of 2017

A.G.Simla ... Petitioner
Vs.

The Tahsildar
Salem West,
Salem. ... Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari, calling for the records relating to the eviction notice issued under Section 6 of the Tamil Nadu Land Encroachment Act dated 19.10.2017 on the file of the respondent in respect of the occupation of the petitioner in S.No.130-1, Chettisavadi Village to the extent of 0.20.0 hectare and quash the same.

For Petitioner : Mr.S.Doraisamy

For Respondent : Ms.M.E.Raniselvam
Additional Government Pleader

O R D E R

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

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

2. Ms.M.E.Raniselvam, Additional Government Pleader accepts notice on behalf of the sole respondent.

3. The petitioner claims that land admeasuring to an extent of 12.90.5 hectares comprised in Survey No.130-1 of Chettichavadi Village, Gorimedu, Salem is a Government poromboke land and the said land is not used by the Government for any purpose for over 100 years and several persons like the petitioner, who are in occupation of the land are doing agricultural activities and are running small scale units etc.

in the land in question, and the petitioner claims possession of 0.20.0 hectares in the said land for over 20 years and with necessary licence and permission, her husband Mr.K.C.Govindaraju is running a unit in the name and style of M/s.G.S.Enterprises, for manufacturing and trading Magnesite.

4. Mr.S.Doraisamy, learned counsel appearing for the petitioner would submit that to the shock and surprise of the petitioner, she has been issued with the impugned notice dated 19.10.2017 under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 and would further submit that before issuance of notice under Section 6 of the said Act, it should be preceded with notice under Section 7 of the said Act and without following the due process of law, the possession of the petitioner and her husband is sought to be disturbed and hence prays for appropriate orders.

5. Per contra, Mr.A.E.Raniselman, learned Additional Government Pleader appearing for the respondent would submit that after following due process of law, action is being taken by the respondent.

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

7. A perusal of the affidavit and typed set of documents filed in support of this writ petition did not reveal the fact whether the Magnesite grinding unit run by the petitioner's husband, under the name and style of M/s.G.S.Enterprises is having pollution clearance or other necessary and required licence or not? Therefore, the respondent is directed to verify the same after putting the husband of the petitioner on notice and thereafter, take appropriate action. In so far as the challenge to the impugned notice is concerned, this Court is of the considered view that the petitioner is having an alternative remedy under Section 10 of the Tamil Nadu Land Encroachment Act in the form of appeal before the appellate authority and also shall pray for interim orders under Section 10-B of the said Act.

8. In the light of the above facts and circumstances, and without going into the merits of the claim projected by the petitioner in this writ petition, the petitioner is at liberty to file the appeal under Section 10 of the Tamil Nadu Land Encroachment Act, by enclosing relevant and authenticated documents before the appellate authority within a period of four weeks from the date of receipt of a copy of this order along with a petition for stay, and the appellate authority, on receipt of the said appeal, shall entertain the same, if the papers are otherwise in order and shall take up the petition for stay and give a disposal in accordance with law within a further

period of four weeks thereafter and either the appellate authority or its delegated official is directed to take up the main appeal itself and pass orders on merits and in accordance with law, within a further period of eight weeks thereafter, and communicate the decision taken, to the petitioner. The respondent, till the disposal of the petition for stay by the appellate authority, shall defer further decision in terms of the impugned notice dated 19.10.2017.

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

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To:

1.The District Collector
Salem District.

2.The Tahsildar
Salem West,
Salem.

+1cc to Mr.S.Doraiswamy, Advocate sr.75799

W.P.No.27505 of 2017

ss(30/10/2017)

सत्यमेव जयते

WEB COPY