

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE
W.P No.27556 and W.M.P.No.29482 of 2017

R. Renuka

...Petitioner

Vs

1. The State of Tamil Nadu,
Represented by its Secretary,
Department of Local Administration,
Fort St.George, Chennai - 600 009.

2. Block Development Officer,
Panchayat Union Office, Marakkanam
Panchayat Union, Marakkanam Taluk,
Villupuram District.

..Respondents

Prayer:- The Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records and notice in Na.Ka.A2/224/2017 dated 11.10.2017 on the file of the second respondent herein and quash the same as illegal and pass orders.

For Petitioner : Mr.J. Antony Jesus

For Respondents : Mr.A.N.Thambidurai, SPL GP

ORDER

By consent the writ petition is taken up for final disposal. Mr. A.N.Thambi Durai, learned Special Government Pleader accepting notice on behalf of the respondents

2. The petitioner in the affidavit filed in support of this writ petition would aver among other things that she is eking out for her livelihood by doing agriculture coolie work and claims to be in possession and enjoyment of "kulam Poramboke" in survey no.372, Kilputhupattu Village, Marakkanam taluk, admeasuring to an extent of one acre and that she is in possession and enjoyment of the said land for over thirty years.

3. The petitioner would further state that to her shock and surprise, the 2nd respondent has issued the impugned notice dated 11.10.2017 stating that notices under Sections 7 and 6 of the Tamil Nadu Land Encroachment Act, 1905, issued to her on 20.02.2017 and 24.03.2017 respectively. In spite of it, she has failed to remove the encroachments and therefore, the 2nd respondent has called upon the petitioner to remove the

encroachments on or before 19.10.2017, failing which, the same will be removed with the help of police and revenue officials and she will be evicted on 20.10.2017 and challenging the legality of the same, the petitioner came forward to file this writ petition.

4. Mr.J.Antony Jesus, learned counsel appearing for the petitioner would submit that though in the impugned notice, it is stated that the petitioner has been issued with notices under Sections 7 and 6 of the Tamil Nadu Land Enrcoahment Act, 1905, no such notices have been received and though, the land in question is classified as water body, the land lies on a higher plateau and as such, there will not be any inundation during rainy season and hence, prays for appropriate orders.

5. Per Contra Mr.A.N.Thambidurai, the learned Special Government Pleader appearing for the respondents would submit that admittedly the land in question has been classified as water body and as per Government Order and various decisions, no encroachment on water body can be done and on account of impending North East Monsoon, there is likely of inundation and other consequential threats and taking into consideration of the said aspects, the action has been taken strictly in accordance with law and prays for dismissal of this writ petition.

6. The Court has considered the rival submissions and also perused the material placed before it.

7. It is not in dispute the land in survey no. 372, Kilputhupattu Village, Marakkanam Taluk, Villupuram District has been classified as water body. The petitioner claims to be in possession and enjoyment of the particular extent of the land for over 30 years and also put up superstructure and residing there along with his wife and children and the said superstructure is also subjected to statutory levies.

8. Though the petitioner prays for a larger relief this Court in the light of the above facts and circumstances and without going into the merits of the claim projected by the petitioner, permits him to avail the appeal remedy under Section 10 of the Tamil Nadu Encroachment Act 1905. The petitioner is at liberty to file an appeal before the Collector of Villupuram District under Section 10 of the Land Encroachment Act 1905, within a period of four weeks from the date of a receipt of copy of this order along with the petition for stay as well as relevant and authenticated documents evidencing her claim and upon receipt of the same, the Collector of the Villupuram District, shall entertain the appeal, if the papers are otherwise in order and take up the petition for stay and give a disposal in accordance with law, within a period of two weeks thereafter and the said official is at option to take up the main appeal itself and give a disposal within a further period of eight weeks thereafter

and till the disposal of the petition for stay, the 2nd respondent shall defer further decision in terms of the above said notices.

9. In the result, the writ petition stands disposed of accordingly.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

rka/smn

To

1. The Secretary,
State of Tamil Nadu,
Department of Local Administration,
Fort St. George, Chennai - 600 009.
 2. Block Development Officer,
Panchayat Union Office, Marakkanam
Panchayat Union, Marakkanam Taluk,
Villupuram District.
- + 1 cc to Mr. J. Antony Jesus, Advocate SR.76526
+ 1 cc to Government Pleader Sr.77198

W.P.No.27556 of 2017

KJI (CO)
EU (29/11/2017)

सत्यमेव जयते

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