

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2017

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.28329 of 2017

C.Malar

... Petitioner

vs.

1. The Secretary to Government,
Public Works Department,
Secretariat, Chennai 9.
 2. The District Collector,
Chennai.
 3. The Commissioner,
Corporation of Greater Chennai,
Chennai.
 4. The Tahsildar,
Egmore Taluk,
Chetpet, Chennai 600 031.
 5. A.S.V.Constructions Pvt. Ltd.,
No.719, Adarsh Tower,
Rangoon Street,
Chennai 600 006.
- ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, forbearing the officials of the respondents from demolishing the petitioner's residential house at T.S.No.36/44 part, Nungambakkam Village.

For Petitioner : Mr.M.Gnanasekar
For Respondents 1,2 & 4 : Mr.S.Diwakar,
Special Government Pleader

For 3rd Respondent : Mr.T.C.Gopalakrishnan

For 5th Respondent : No appearance

O R D E R

The petitioner has come up with this Writ Petition seeking

to forbear the the officials of the respondents from demolishing her residential house at T.S.No.36/44 part, Nungambakkam Village.

2. It is the case of the petitioner that Arcot Nawab came forward to give the lands in T.S.No.36/44 part, Nungambakkam Village on lease to the petitioner's mother, viz. Lakshmi Ammal vide registered lease deed No.678/1979, dated 17.05.1979 for a period of 20 years and the lease was not terminated. Her mother was allowed to reside in the said premises for years together from the date of lease. Though, there were attempts to encroach upon the said lands, her mother resisted the same and she even made a representation to the Hon'ble Chief Minister Cell as well as to the District Collector and Tahsildar.

3. It is the further case of the petitioner that her mother died on 24.10.2007 and she made a representation to the 4th respondent/Tahsildar on 03.10.2017 requesting him to survey the lands in T.S.No.36/44 part, Nungambakkam Village and also made a representation to the District Collector to intervene in the matter and prevent the encroachments made by the 5th respondent herein.

4. Learned counsel for the petitioner contended that when there is a lease agreement and when the petitioner is residing in S.No.36/44, she cannot be evicted.

5. Learned Special Government Pleader appearing for respondents 1, 2 and 4, produced a sketch (which forms part of the record) pertaining to the property in question and pointed out that the portion marked in pink colour pertains to Coovum river bank and that the petitioner is residing there, whereas, T.S.No.36/44 is a Government land. It is his contention that when the petitioner is actually residing on Coovum river bank, she has no locus to claim leasehold right over the land in question.

6. Heard the learned counsel on either side and perused the material documents available on record.

7. From the records produced by the respondents, it is seen that the petitioner is not residing in T.S.No.36/44 part, Nungambakkam Village. On a perusal of the sketch, it is clear that the place where the petitioner claims to be residing is on the banks of the River Coovum. Even assuming that there is a lease deed pertaining to T.S.No.36/44 and that the lease period would have expired, the petitioner has not even produced a copy of the Lease Deed in respect of her leasehold rights.

8. In view of the above, this Court finds no reason to grant the relief sought by the petitioner. However, it is for the petitioner to establish before the appropriate forum that

there was a lease agreement in respect of the land in question.

9. Respondents are directed to remove the encroachments forthwith and restore the premises to its original position, at the earliest. It is open to the petitioner to participate in the enumeration process with regard to the allotment of alternative site and the petitioner cannot be allowed to continue in the present premises.

10. Before parting with, this Court observes that once encroachments are removed, the Government authorities shall ensure that no further encroachments are made in the public property. The Government shall further ensure that no indulgence is shown to fresh encroachers, by giving them alternative sites. This Court wonders, as to how Ration Cards and Voter Identity Cards are given by the Government to people residing unauthorisedly in public property. Had the Government denied issuance of Ration Card, Voter Identity Cards to slum dwellers, certainly encroachments could have been curtailed in the bud. The Government could have insisted that Ration Cards and Voter Identity Cards would be issued only if slum dwellers reside in the alternative accommodation, so provided. Having allowed people to reside in public property for years together and asking them to evict in a fine morning is not a welcome one, but, it is the need of the hour. Government is aware that the months spanning from October to December is rainy season. They should have commenced the process atleast from February and removed all encroachments, as prevention is better than cure.

This Writ Petition is dismissed with the above direction and observation. No costs. Consequently, connected W.M.P.No.30433 of 2017 is closed.

Sd/-

Assistant Registrar

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

(aeb)

To:

1. The Secretary to Government,
Public Works Department,
Secretariat, Chennai 9.
2. The District Collector, Chennai.
3. The Commissioner,
Corporation of Greater Chennai, Chennai.

4. The Tahsildar,
Egmore Taluk, Chetpet, Chennai 600 031.

+1cc to Mr.M.Gnanasekar, Advocate, S.R.No.84468

+1cc to Mr.T.C.Gopalakrishnan, Advocate, S.R.No.84182

+1cc to the Government Pleader, S.R.No.84753

W.P.No.28329 of 2017

RRK(14/12/2017)



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