IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:13.11.2017
CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

WP.No.28863 of 2017 and W.M.P.No.31078 of 2017

A.Fathima .. Petitioner

Versus

1.The District Collector,
Nilgris District,
The Nilgris.

2.The District Revenue Officer,
O/o.District Revenue Office,
Ooty,
Nilgris District.

3.The Tahsildar,
Ooty Taluk,
The Nilgris.

4.The Revenue Inspector,
O/o Thasildhar,
Sholur Village,
Udhagamandalam. .. Respondents

PRAYER:- Writ petitions filed under Article 226 of the Constitution of India prays to issue a Writ of mandamus directing the respondents not to interfere with the petitioner's peaceful possession and enjoyment of property in S.No.361/20 of an extent of an 2 cents in Sholur Nagarthani, Sholur post, Nilgris District and consequently direct the 4th respondent to assess the tax to the petitioner's tin sheet.

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For Petitioner :Mr.J.Franklin
For Respondents :Mr.A.N.Thambidurai, Spl.GP

ORDER

By consent, the writ petitions are taken up for final disposal. Mr.A.N.Thambidurai, learned Special Government Pleader accepts notice on behalf of respondents 1 to 4.

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2 The petitioner claims to be a resident of Sholur Nagarthani, Sholur Post, Nilgris District. According to her admittedly, she is an encroacher of the land admeasuring to an extent of 0.00.5 Hectares in S.No.361/20 classified in the revenue records as "Grama Meikkal" and she had put up a tin sheet (house shed). The petitioner would further states that she is aged about 68 years and her husband is aged about 76 years and they are in possession and enjoyment of the land for very many years and all of a sudden, the 3rd respondent has issued notice under Section 6 of Tamil Nadu Land Encroachment Act, 1905 on 25.10.2017, calling upon the petitioner to evict the said land within fifteen days from the date of receipt of the notice and challenging the legality of the same, she is constrained to approach this Court by filing the writ petition.

3 The learned counsel appearing for the petitioner would submit that the impugned notice issued under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 should be preceded by the notice under Section 7 of above said Act. The mandatory procedures contemplated under the provisions of the above said Act have not been followed and hence, the impugned notice is liable to be quashed.

4 Per contra, Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents would submit that since the petitioner having an effective alternate remedy, the present writ petition is not maintainable and even as per her own submission, the petitioner is an encroacher.

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

6 It is relevant to extract sections 10 and 10-B of the Tamil Nadu Land Encroachment Act, 1905:-

> "Section 10:- An appeal shall lie [a] to the Collector from any decision or order passed by a Tahsildar or Deputy-Tahsildar [or an authorised officer] under this Act, and [b] to the District Collector from any decision or order passed otherwise than on appeal, and [c] to the Board of Revenue from any decision or order of a District Collector otherwise than on appeal.
>
> Section 10-B:- Pending disposal of any appeal or application or proceedings for revision under this Act, the Collector, the District Collector, the Board of Revenue, or the

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State Government, as the case may be, may by order, and subject to such conditions as may be specified therein, stay the execution of the decision or order appealed against or sought to be revised."

7 This Court, in the light of the above facts and circumstances and without going into the merits projected by the petitioner, permits the petitioner to file an appeal before the 1st respondent under Section 10 of the above said Act along with petition for stay under Section 10B of the said Act, by enclosing all the relevant and authenticated documents within a period of four weeks from the date of receipt of a copy of this order and upon receipt of the same, the 1st respondent shall entertain the appeal, if the papers are otherwise in order and either the 1st respondent or the delegated authority on his behalf, is at option to take up the petition for stay and give a disposal in accordance with law within a further period of four weeks thereafter and the said official is also at option to take up the main appeal itself and give disposal on merits and in accordance with law within eight weeks from the date of entertaining of the appeal petition and communicate the decision to the petitioner and till then, the 3rd respondent shall defer further proceedings in respect of impugned notice dated 25.10.2017. It is also made clear that the petitioner till the disposal of the appeal shall not create third party rights and shall not alter the physical feature of the land and superstructure in question also.

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

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To
1.The District Collector,
Nilgris District,
The Nilgris.

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Ooty Taluk,
The Nilgris.

4.The Revenue Inspector,
O/o Thasildhar,
Sholur Village,
Udhagamandalam.

+1cc to M/s.J.Franklin Associates SR.No.80296
+1cc to Government Pleader SR.No.80540

WP.No.28863 of 2017

sm:7.12.2017

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