

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.P No.28921 of 2017
and
W.M.P.No.31137 and 31138 of 2017

Mrs.Pushpadevi ... Petitioner

Vs

1. The District Collector,
Coimbatore District,
Coimbatore.
2. The Tahsildar,
Kinathukidavu Taluk,
Coimbatore District.
3. The Revenue Inspector,
Periyakalanthai Firka,
Kinathukidavu Taluk,
Coimbatore 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 pertaining to the impugned Notice dated 27.10.2017 issued under Section 7 of the Tamil nadu Land Encroachments Act, 1905 and consequential Notice dated 06.11.2017 issued under Section 6 of the Tamil Nadu Land Encroachments Act, 1905 on the file of the 2nd respondent, in respect of the petitioner's Property viz. Plot No.13, measuring to an extent of 0.80 sq.mtrs (2 Cents) in Survey No.439 in Periyakalandai Village, Kinathukidavu Taluk, (earlier in Pollachi Taluk), Coimbatore District and quash the same.

For Petitioner : Mr.R.Neelakandan for
M/s.S.Vijaya Ganesh

For Respondents : Mr.A.N.Thambidurai
Special Government Pleader

ORDER

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

By consent the writ petition is taken up for final disposal. Mr. A.N.Thambidurai, learned Special Government Pleader accepting notice on behalf of the respondents 1 to 3.

2. The petitioner would claim that she has applied for provision of a House Site, under "poor houseless category" as she did not own any property and the Tahsildar, Kinathukidavu Taluk, Coimbatore District vide proceedings in Na.Ka.No.16557/12/A7/82/1422 dated 27.07.2012, considering the application of the petitioner, assigned a piece of land admeasuring to an extent of 0.80 Sq.m in Survey No.439 of Periyakalandai Village, Pollachi Taluk and the petitioner claims that after allotment of house site and issuance of Patta, she had put up a small dwelling hut and started residing along with her family and during 2015 floods, it got damaged and due to paucity of funds, the petitioner could not repair the same. The petitioner would further state that to her shock and surprise, she was issued with a Notice dated 27.10.2017 under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, by the 2nd respondent for which, she has submitted a detailed response dated 03.11.2017 and however, the 2nd respondent without even considering the said representation, has issued the impugned Notice under Section 6 of the said Act on 06.11.2017 and challenging the legality of the both the notices, the petitioner came forward to file this writ petition.

3. Mr.R.Neelakandan, learned counsel appearing for the petitioner has drawn the attention of this Court to the typed set of papers and would submit that admittedly the petitioner has been assigned a piece of land with a house site patta and as such, it cannot be said that the petitioner has encroached upon the public land. The learned counsel appearing for the petitioner further submits that despite submission of a detailed representation in response to the Section 7 Notice issued under the Tamil Nadu Land Encroachment Act, 1905, the 2nd respondent without even referring to the same, has issued the notice under Section 6 of the said Act and since the procedure mandated under the said Act has been given a total go-by, prays for interference.

4. Per contra, Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents would submit that the petitioner is having an effective alternate remedy under Section 10 and 10-B of the Tamil Nadu Land Encroachment Act, 1905 and hence prays for dismissal of the writ petition.

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 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. Though the petitioner prays for larger relief, this Court in the light of the above facts and circumstances, permits the petitioner to file an appeal along with a petition for stay under sections 10 and 10-B of the Land Encroachment Act 1905, by enclosing all the relevant and authenticated documents within a period of four weeks from the date of a receipt of copy of this order. The appellate authority / 1st respondent shall entertain the appeal petition along with the petition for stay, if the papers are otherwise in order and the 1st respondent or the official delegated 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 1st respondent / delegated official is also at option to take up the main appeal itself and give a disposal in accordance with law within a further period of eight weeks thereafter and communicate the decision taken to the petitioner and till the disposal of the appeal, the 2nd respondent shall defer further proceedings in terms of the notices issued under Sections 7 and 6 of the Tamil Nadu Land Encroachment Act, 1905. It is made clear that the petitioner till the disposal of the appeal by the 1st respondent / delegated official, shall not create any third party rights in respect of land and superstructure in question and shall also not alter the physical features of the same.

8. In the result, the writ petition stands disposed of. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

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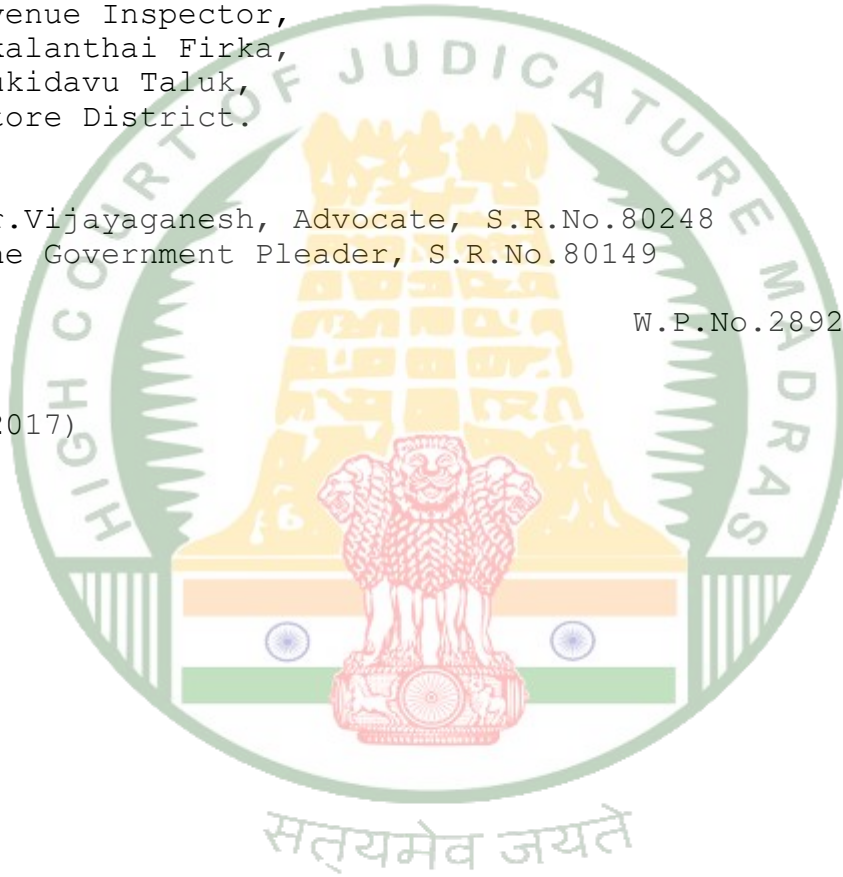
To

1. The District Collector,
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2. The Tahsildar,
Kinathukidavu Taluk,
Coimbatore District.
3. The Revenue Inspector,
Periyakalanthai Firka,
Kinathukidavu Taluk,
Coimbatore District.

+lcc to Mr.Vijayaganesh, Advocate, S.R.No.80248
+lcc to the Government Pleader, S.R.No.80149

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VGII(CO)
CA(14/11/2017)



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