

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.No.2310 OF 2012

- 1 THE REVENUE DIVISIONAL OFFICER
CHIDAMBARAM.
- 2 THE TAHSILDAR
KATTUMANNARKOIL TOWN PANCHAYAT
CUDDALORE DT. ... Appellants.
- versus
- 1 S.KANAGALAKSHMI
- 2 THE EXECUTIVE OFFICER
KATTUMANNARKOVIL TOWN PANCHAYAT
CUDDALORE DISTRICT ... Respondents

Appeal filed against the order passed by this Court dated 18 June 2012 passed in W.P.No.455 of 2003.

W.P.No.455 of 2003:-

filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the respondents 1 to 3 to restore possession of the property situate at Door Nos.42 to 45 in Valayalkarar st. Kattumanarkovil Town Panchayat Cuddalore District and further direct the respondents to pay a compensation of Rs. 10,00,000/- for illegally demolishing building.

For appellants : Ms.A.Srijayanthi, Spl.G.P.
For Respondents : Mr.V.Ragavachari, for R-1

J U D G M E N T

(made by K.K.SASIDHARAN, J.)

The third appellant, without initiating proceedings by invoking the Land Encroachment Act, 1905, demolished the building constructed by the first respondent and thereby caused

her substantial loss. The Writ Petition filed by the first respondent before the writ court to restore possession and payment of compensation was allowed. The order is under challenge in this intra court appeal.

2. The learned Special Government Pleader submitted that the third appellant removed the illegal construction made by the first respondent on a public property and as such, the learned Single Judge was not correct in directing delivery of possession and payment of compensation. According to the learned Special Government Pleader, there was no need to initiate proceedings under the Tamil Nadu Land Encroachment Act in view of the decision taken by the Peace Committee to remove all such encroachments.

3. We have also heard the learned counsel for the first respondent.

4. There is no dispute that the third appellant without initiating proceedings under the Tamil Nadu Land Encroachment Act, removed the superstructure put up by the first respondent in an high handed manner. Even according to the appellants, the first respondent is in possession of the land in S.No.202/2. It is the case of the appellants that she is also in possession of the Government land in S.No.202/1, which is described as Vaikal Poramboke. The appellants maintain that since the first respondent was in possession of the Government land, she was evicted summarily and the superstructure was demolished.

5. It is the case of the first respondent that her construction is confined to her property. In case the appellants were of the view that the first respondent was in possession of the Government land, notice should have been issued to her under the Tamil Nadu Land Encroachment Act for removal of such encroachment. The third appellant knowing fully well that the first respondent constructed the house, removed a portion of which without issuing notice. The third appellant ought to have measured the property before initiating proceedings for eviction. The third appellant erred in evicting the first respondent summarily without taking action in accordance with law. The learned Single Judge was therefore perfectly correct in directing the appellants to put the first respondent in possession of the property and to pay her compensation for forcible eviction and demolition of the hut. Since there is no dispute with regard to the fact that notice was not given to the first respondent and proceedings were not taken under the Tamil Nadu Land Encroachment Act, 1905, there is no need to direct the first respondent to file a civil suit. We are therefore of the view that the learned Single Judge was correct in issuing a Mandamus.

6. The third appellant was responsible for the entire illegal act. Therefore, liability is only on the third appellant to pay the compensation. We direct the State to pay the compensation in terms of the order passed by the learned Single Judge, in case the same has not been paid, within a period of two months from the date of receipt of a copy of this order, and recover the same from the salary of the third appellant.

7. The intra court appeal is dismissed with the above observation. No costs. Consequently, M.P.No.1 of 2012 is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. THE EXECUTIVE OFFICER
KATTUMANNARKOVIL TOWN PANCHAYAT
CUDDALORE DISTRICT
2. THE REVENUE DIVISIONAL OFFICER
CHIDAMBARAM.
3. THE TAHSILDAR
KATTUMANNARKOIL TOWN PANCHAYAT
CUDDALORE DT.

+1cc to the Government Pleader, S.R.No.75322

W.A.No.2310 OF 2012

KJI (CO)
CS/28/11/17

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