

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.25548 of 2013

and

M.P. No. 1 of 2013

Anna Poorani

.. Petitioner

vs.

1. The State rep. by
The District Collector
District Collector Office
Theeran Chinnamalai Maligai
Erode District
Erode-11.

2. The Tahsildar
Tahsildar Office
Bhavani.

3. The Superintendent of Police
Erode District
Erode.

4. The Inspector of Police
Bhavani Police Station
Bhavani

5. Nadaraj

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Mandamus, to direct the respondents not to interfere the petitioner's peaceful possession of the property which is having survey No.467/5 and situated at Perumapalayamputhoor, Karadu, Bhavani Taluk, Erode District, pursuant to the petitioner's representation dated 07.08.2013 and pass further orders.

For Petitioner : Mr. R. Thirumoorthy

For Respondents: Mr. S.Diwakar

Spl. Govt. Pleader for R1 to R4

No Appearance for R5

ORDER

The petitioner has filed this writ petition seeking to direct the respondents not to interfere with the peaceful possession of the petitioner's property, in survey No.467/5 and situated at Perumapalayam puthoor, Karadu, Bhavani Taluk, Erode District, pursuant to the petitioner's representation dated 07.08.2013.

2. Learned counsel for the petitioner submitted that the petitioner and his family members are residing in survey No.467/5 and situated at Perumapalayamputhoor, Karadu, Bhavani Taluk, Erode District for the past 9 years and paying all the Government taxes. The 2nd respondent has issued the Assignment patta in favour of the petitioner. Learned counsel further submitted that the 5th respondent who is having agricultural land on the northern side of the petitioner's house has trespassed into his land and is threatening the petitioner to vacate the premises. Since the respondents have not taken any action on his representations, this writ petition has been filed seeking the aforesaid prayer.

3. Relying on the counter filed by the 2nd respondent, the Tahsildar, Bhavani, learned Special Government Pleader submitted that a house site assignment in S.No.467/5 was given to the petitioner in the year 2007, in Jambai Village, Bhavani Taluk. The adjacent land in S.No. 467/6 is a patta field and it belongs to one Duraisamy. Since his land was occupied by the petitioner, he gave a petition on 03.07.2013 requesting to survey and identify the boundaries of S.No.467/6 Jambai Village. The Firka Surveyor surveyed and identified the boundaries of S.No.467/6 on 27.07.2013. It is also stated in the affidavit that at the time of field survey, the Firka Surveyor found that major portion of the residential hut of the petitioner was located in S. No. 467/6 patta field. In this regard, the Assistant Director of Survey and Land Records, Erode also inspected the subject land and accepted the report of the Field Surveyor. On the basis of inspection and report, the 5th respondent who is the pattadar, lodged a complaint in Bhavani Police Station. At the time of enquiry, the petitioner assured to remove her hut from the land of the 5th respondent before 08.08.2013 but she did not do so. Therefore, some pattadars removed the hut of the petitioner from the land on 09.08.2013. Further, an intimation was also sent by the 2nd respondent in his Office Ref. 12070/2013/A1 dated 04.10.2013 to the petitioner's husband stating that the petitioner shall send an application to allot another house site in S.No. 467/5. But, no application has been sent by the petitioner. At this stage, this writ petition has been filed by the petitioner.

4. Further, in the counter, it is clearly stated that the allegation in the present writ petition is in respect of the land in S.No. 467/6, which has been proved from the report of the field surveyor that the petitioner has wrongly constructed her hut in the patta field belonging to the 5th respondent. Agreeing the same, the petitioner has also undertaken to remove her hut from the patta field before the police authorities. It is further submitted that without disclosing the said fact, the petitioner has approached this Court and hence the writ petition deserves to be dismissed.

5. Heard learned counsel for the petitioner and learned Special Government Pleader for the department respondents.

6. It is an admitted fact that Assignment Patta has been granted by the respondents in favour of the petitioner with respect to S.No. 467/5 of Jambai Village. As rightly submitted by the learned Special Government Pleader, the petitioner has constructed the dwelling house in the patta field in S.No.467/6. Therefore, action has been taken and notice has also been sent and the petitioner has also appeared before the police office and had undertaken to remove the house. Further, it is submitted that notice has been sent on 09.10.2013 requesting the petitioner's husband to submit an application for allotting another house site in S.No. 467/5. Without stating the above facts, the petitioner has filed the present writ petition.

7. In view of the above, no prima facie case has been made out by the petitioner and hence the writ petition is dismissed. However, the petitioner is at liberty to approach the civil court for her remedy, if aggrieved. Consequently, the connected M.P is closed. No costs.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

avr

To

1. The District Collector
District Collector Office
Theeran Chinnamalai Maligai
Erode District
Erode-11.

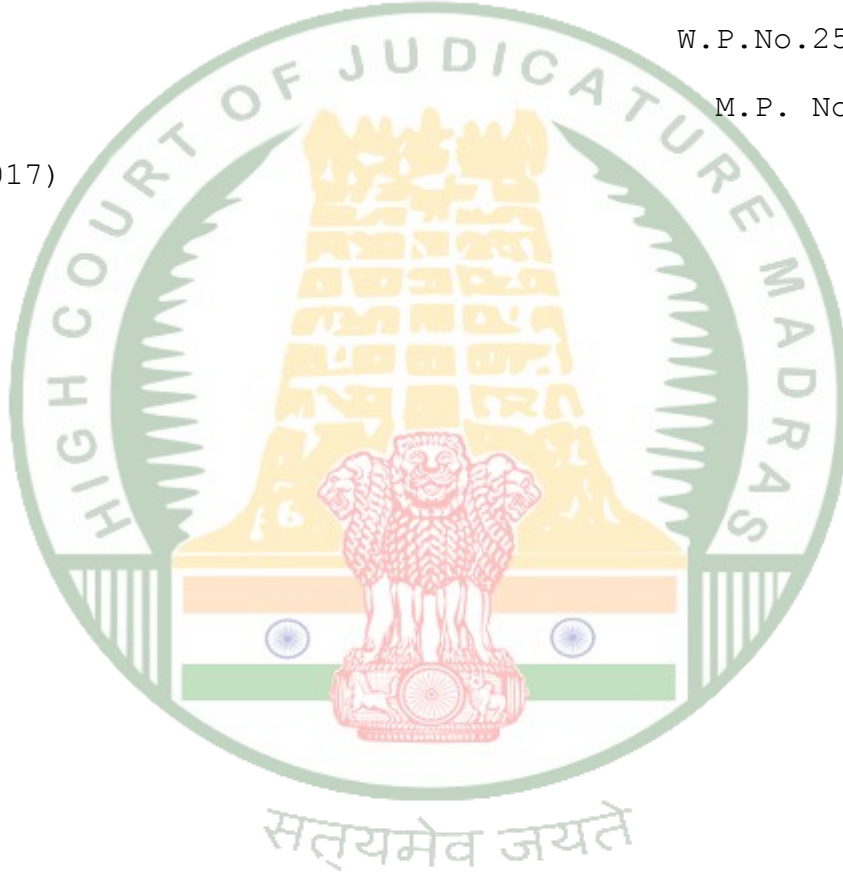
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2. The Tahsildar
Tahsildar Office
Bhavani.
3. The Superintendent of Police
Erode District, Erode.
4. The Inspector of Police
Bhavani Police Station
Bhavani

+lcc to Government Pleader sr.2069

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