



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 29.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.(MD)No.832 of 2017

and C.M.P. (MD) Nos.5716 and 5717 of 2017

Usha Latha

: Appellant/Petitioner

Vs.

- 1.The District Collector,
Thoothukudi District,
Thoothukudi.
- 2.The Tashildar,
Sattankulam Taluk,
Thoothukudi District.
- 3.The Commissioner,
Sattankulam Panchayat Union,
Sattankulam,
Thoothukudi District.
- 4.Sasi Sivanatham
- 5.Athilingaraj

: Respondents/Respondents

PRAYER: Writ Appeal is filed under clause 15 of the Letters Patent, against the order dated 01.03.2016 passed by the learned Single in W.P.(MD) No.2907 of 2015.

Prayer in WP(MD) . 2907/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned letter, vide A2/3077/2014 dated 18.02.2015 issued by the 3rd respondent and quash the same as void, unlawful and illegal and thereby directing these respondents, 1 to 3 to follow as per the contemplated provision of law , rule and judgement in matter of encroachment eviction and pass such other orders.

For Appellant

: Mr.F.X.Eugene

For Respondents 1 to 3 : Mr.V.Muruganantham

Additional Government Pleader

JUDGMENT

[Judgment of the Court was made by T.S.SIVAGNANAM, J.]

<https://hcservices.ecourts.gov.in/hcservices/> Heard by Mr.F.X.Eugene, learned counsel appearing for the appellant and Mr.V.Muruganantham, learned Additional Government Pleader appearing for the respondents 1 to 3.



2. By consent of both sides, the appeal itself is taken up for final disposal.

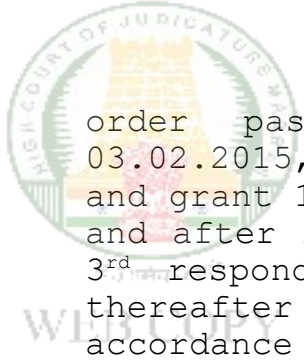
3. Aggrieved by the dismissal of the writ petition in W.P. (MD) No.2907 of 2015, by order dated 01.03.2016, filed by the appellant, challenging a communication sent by the third respondent / the Commissioner, Sattankulam Panchayat Union, dated 18.02.2015, terming the petitioner as an encroacher and directing her to vacate the premises within 15 days from the date of receipt of the communication, the petitioner came before the Writ Court claiming that no opportunity was granted to the petitioner/appellant before sending the said communication and it is not a notice and it is an order by itself. Further, the appellant was not aware as to what was the order passed by the District Collector, Thoothukudi District dated 03.02.2015 and the order passed by the Tahsildar, Sattankulam dated 09.02.2015, though both the proceedings were referred to in the communication dated 18.02.2015 of the third respondent.

4. The 3rd respondent Panchayat Union had filed a counter affidavit in the writ petition stating that there has been encroachment in S.No.479/2 of Naduvakurichi Village, Sattankulam Taluk, Thoothukudi District, which according to the 3rd respondent is a 'Vandi Pathai'. There is also reference to a Peace Committee Meeting, which was convened by the second respondent with regard to the alleged encroachment.

5. The appellant's case is that she is the absolute owner of S.No.475/1B and 479/3E of Naduvakurichi Village, Sattankulam Taluk, Thoothukudi District, and there is no question of encroachment in the Government property. Further, the communication, which was impugned in the writ petition, is bereft of details as to what is the nature of encroachment made by the petitioner and what is the order passed by the District Collector, Thoothukudi and the Tahsildar, Sattankulam.

6. In this appeal, we agree with the learned counsel for the appellant that the communication dated 18.02.2015, is not a notice but an order by itself as it has granted 15 days time to the appellant to remove the encroachment and no opportunity was granted to the appellant to submit her explanation. We have to point out that the communication is bereft of particulars and no useful purpose will be served in directing the appellant to give her explanation. Therefore, we are inclined to interfere with the order passed in the writ petition.

6. Accordingly, the Writ Appeal is allowed and the order passed by the Writ Court in W.P. (MD) No.2907 of 2015 dated 01.03.2016, is set aside with a direction to the third respondent / Commissioner, Sattankulam Panchayat Union to issue a show cause notice to the appellant and others, who are alleged to have encroached the Government land, clearly giving full particulars and also informing the appellant and others about the contents of the



order passed by the District Collector, Thoothukudi dated 03.02.2015, and the proceedings of the Tahsildar dated 09.02.2015 and grant 15 days time to appellant and others to submit their reply and after receipt of the reply, enquiry has to be conducted by the 3rd respondent by affording opportunity of personal hearing and thereafter a speaking order shall be passed on merits and in accordance with law. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar(Protocol)

/True Copy/

Sub Assistant Registrar

To

- 1.The District Collector,
Thoothukudi District,
Thoothukudi.
- 2.The Tashildar,
Sattankulam Taluk,
Thoothukudi District.
- 3.The Commissioner,
Sattankulam Panchayat Union,
Sattankulam,
Thoothukudi District.

+1cc to Mr.F.X.Eugene Advocate in SR. NO.62970

+1cc to THE SPECIAL GOVERNMENT PLEADER in SR. No.62848

SJ

JS/KP/SAR.1/6.7.2017/3P-6C

ORDER MADE IN
W.A. (MD) No.832 of 2017
and C.M.P. (MD) Nos.5716 and 5717 of 2017
Dated:29.06.2017