



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.10.2017

CORAM:

**THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE**

W.P.(MD)No.17197 of 2017

and

W.M.P(MD)No.13765 of 2017

Tmt.Kanagavalli : Petitioner

.vs.

1. The District Collector,
Sivagangai District,
Sivagangai.

2. The Sub-Collector,
Devakkottai,
Sivagangai District.

3. The Tahsildar,
Karaikudi,
Sivagangai District.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying this Court for issuance of a Writ of Certiorari calling for the records in pursuant to the impugned order dated 6.9.2017 passed by the third respondent relating to S.No.156 part, Ward-2, Block 34, Muthupattinam Parupoorani area in which the Petitioner's dwelling house in Door No.6/30(24) in South Street, Kalanivasal is situated and quash the same as illegal.

For Petitioner : M/s.S.Madhavan

For Respondents : Mr.M.Govindan
Spl Govt.Pleader

O R D E R

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

This Writ Petition has been filed seeking issuance of a Writ of Certiorari calling for the records in pursuant to the impugned order, dated 6.9.2017 passed by the third respondent relating to S.No.156 part, Ward-2, Block 34, Muthupattinam Parupoorani area in which the Petitioner's dwelling house in Door No.6/30(24) in South Street, Kalanivasal is situated and quash the same as illegal.



2. Heard both sides. No counter is filed on behalf of the respondents 1 to 3.

3. By consent, the main Writ Petition itself is taken up for final disposal.

4. According to the learned counsel for the Petitioner, the impugned order of the third respondent, dated 6.9.2017, pointing out that the Petitioner's house is in encroachment is unsustainable in law. In this regard, it is projected on the side of the Petitioner that the impugned demolition notice, dated 6.9.2017 was issued by the third respondent/The Tahsildar, Karaikudi, Sivagangai District by not applying his mind and in fact, the Petitioner had purchased the property in question by way of a registered Sale Deed, through Ramanujam on 3.3.1993 (Vide Document No.445/1993)

5. The grievance of the Petitioner is that she lost her husband, who was a practicing Advocate and from the date of purchase, she has been in enjoyment of the property paying local tax regularly. In fact, the claim made by the third respondent that she is an encroacher is based upon wrong classification that the property is in temple poramboke.

6. At this stage, the learned counsel for the Petitioner vehemently contends that this Court on an earlier occasion in W.P. (MD) No.13704 of 2017, dated 25.7.2017 had passed an order and at paragraph 3, which runs as under:

''3. It is seen that the third respondent-the Tahsildar has merely filled up the statutory format and issued the order. This is not permissible in law as there is no application of mind. On this ground, we set aside the order passed under Section 6 of the Tamil Nadu Encroachment Act and remit the matter back to the file of the third respondent. It is open to the third respondent to pass a fresh order under Section 6 of the Tamil Nadu Encroachment Act, after following the due process of law and also after considering the objection raised by the Writ Petitioner.''

7. In spite of the aforesaid direction issued by the Honourable Division Bench of this Court in W.P. (MD) No.13704 of 2017, dated 25.7.2017, the third respondent had issued a notice under Section 6 of the Tamil Nadu Encroachment Act, 1905, which is clearly unsustainable in the eye of law.

8. In response, the learned Special Government Pleader appearing for the respondents 1 to 3 brings it to the notice of this Court that the third respondent/The Tahsildar, Karaikudi, Sivagangai District had issued an Enquiry Notice on 25.09.2017,



requiring the Petitioner to appear on 10.10.2017 at 11.00 a.m and to submit her explanation.

9. Inasmuch as the petitioner is required to appear before the third respondent on 10.10.2017 at 11.00 a.m without fail and raise her objections/remarks in the subject-matter in issue, this Court deems it fit and proper to direct the third respondent to conduct a detailed enquiry in the subject-matter in issue, by taking into consideration of oral/written objections of the Petitioner to be submitted by her on 10.10.2017 and to dispose of the subject matter in issue within a period of six weeks from the date of receipt of a copy of this order, by passing a reasoned speaking order on merits, after providing necessary opportunity to the Petitioner and others concerned, if any. Liberty is granted to the Petitioner to raise all factual and legal pleas before the third respondent/The Tahsildar, Karaikudi, Sivagangai District. It is open to the Petitioner to examine any witness on her side, if situation so warrants, based on the facts and circumstances of the present case which floats on the surface.

10. With the above-said observation(s) and direction(s), the Writ Petition stands disposed of. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(AD-II)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
Sivagangai District, Sivagangai.
2. The Sub-Collector,
Devakkottai, Sivagangai District.
3. The Tahsildar,
Karaikudi, Sivagangai District.

+ 1 cc TO Mr.S.Madhavan , Advocate in SR No. 81669
+1cc to The Special Government Pleader in SR.No.81792

vsn

AE/KK/SAR3/13.10.2017/3P/6C

ORDER MADE IN
W.P. (MD) No.17197 of 2017
and
W.M.P (MD) No.13765 of 2017
05.10.2017