



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.10.2017

CORAM:

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

W.P. (MD) No.19211 of 2017
and
W.M.P. (MD) No.15557 of 2017

S.Sivakamasundari : Petitioner

-Vs-

1.The District Collector,
Thanjavur District,
Thanjavur.

2.The Tahsildar,
Taluk Office,
Court Road,
Thanjavur.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the Respondents to take the statutory appeal filed under Section 10 of the Tamil Nadu Land Encroachment Act, 1905, against the order passed vide in Na.Ka.No.11702/2002/A5, dated 05.09.2017 on file along with the application for interim stay and dispose of the same in accordance with law and also by taking into consideration the modalities for imposing penal assessment contemplated under Section 3 of the Tamil Nadu Land Encroachment Act, 1905.

For Petitioner : Mr.R.Babu Jaganath
For Respondents : Mr.T.R.Janarthanan,
Additional Government Pleader

O R D E R

[Order of the Court was made by M.VENUGOPAL, J.]
Mr.T.R.Janarthanan, Learned Additional Government Pleader,
takes notice for the Respondents.

2. Heard both sides. No counter is filed on behalf of the



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

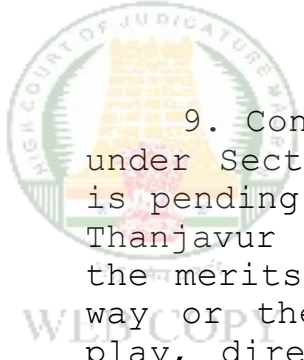
4. According to the Petitioner, the then Tahsildar in the year 2010 had issued a notice under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 for some of the alleged encroachers. At that point of time, she was not at all served with any notice and learnt that persons on whom notice was served by the then Tahsildar had filed their objections. At that time, they had approached this Court to assail the order on the ground that the second Respondent even before the expiry of the time stipulated for filing statutory appeal has attempted to demolish the construction put up in their properties.

5. The Learned Counsel for the Petitioner brings it to the notice of this Court that this Court had directed the first Respondent/District Collector, Thanjavur District, to take up the Appeal on file and further, the statutory appeal was directed to be considered and also the application for interim prayer within a period of two months. It appears that the first Respondent/District Collector had remanded back the matter before the second Respondent. The then Tahsildar, after an order of remand, said to have inspected the entire area and has submitted a detailed report to the first Respondent/District Collector on 25.01.2011 and has given numerous recommendations taking into account the ground reality and also taking into consideration of the long and settled possession. Moreover, the Tahsildar made a recommendation that the Government could grant a lease to all the alleged occupants of the bund of the tank.

6. The grievance of the Petitioner is that the recommendation of the then Tahsildar was not taken into account by the successive District Collectors. When that be the fact situation, in the year 2013, all of a sudden, without any rhyme or reason, again, the then Tahsildar had issued notice under Section 6 to the Petitioner and when she intends to give an explanation, even before obtaining an explanation and without conducting any enquiry and without providing any sufficient opportunity to her, has passed a unilateral order. Being dissatisfied with the same, the Petitioner has preferred a statutory Appeal before the first Respondent and the same is not at all taken on file.

7. In this connection, the Learned Counsel for the Petitioner proceeds to add that the present second Respondent, without looking into the back file and also not applying his mind, had simply passed an order without conducting any enquiry.

8. Now, the appeal papers have been sent by the Petitioner to the first Respondent by registered post on 23.09.2017 and the first Respondent appears to have not taken the Appeal on file.



9. Considering the fact that the Petitioner's Appeal preferred under Section 10 of the Tamil Nadu Land Encroachment Act, 1905, is pending on the file of the first Respondent/District Collector, Thanjavur District, this Court, at this stage, without going into the merits of the matter and also not expressing any opinion one way or the other, in the interest of justice, equity and fair play, directs the first Respondent/District Collector, to number the Appeal, within a period of two weeks from the date of receipt of copy of this order. After assigning number as regard to the Appeal filed by the Petitioner, the first Respondent shall dispose of the said Appeal by providing necessary opportunity to the Writ Petitioner/Appellant and others concerned, of course, within a period of four weeks thereafter, by adhering to the principles of natural justice. Liberty is granted to the Petitioner to raise all factual and legal pleas before the first Respondent, who shall advert to every legal plea/every factual point raised by the Petitioner and pass a reasoned speaking order on merits. Till final orders are passed in the Appeal by the first Respondent/District Collector, it is abundantly made quite clear that the Writ Petitioner/Appellant shall not be disturbed in any manner.

10. With the aforesaid observation(s)/direction(s), the Writ Petition stands disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub-Assistant Registrar

To

1.The District Collector,
Thanjavur District,
Thanjavur.

2.The Tahsildar,
Taluk Office,
Court Road,
Thanjavur.

+One cc to The Special Government Pleader, SR.No.82997
+One cc to Mr.R.BabuJaganath, Advocate, SR.No.82762

SML

RL/5C/3P/JC/SAR1/27/10/2017

<https://hcservices.ecourts.gov.in/hcservices/>

Order made in
W.P. (MD) No.19211 of 2017
13/10/2017