



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.11.2017

CORAM:

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

W.P. (MD) No.22094 of 2017

and

W.M.P (MD) Nos.18409 and 18410 of 2017

M.Paulraj : Petitioner
.vs.

1.The District Collector,
Virudhunagar District,
Virudhunagar.

2.The District Revenue Officer,
Collectorate Building,
Virudhunagar.

3.The Tahsildar,
Tahsildar Office,
Virudhunagar.

: 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 respect of the notice, dated 27.11.2017 issued by the Third Respondent and to quash the same as arbitrary, illegal and null and void.

For Petitioner : M/s.P.Malini
For Respondents : Mr.VR.Shanmuganathan
Special 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 respect of the notice, dated 27.11.2017 issued by the Third Respondent and to quash the same as arbitrary, illegal and null and void.

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

<https://hcservices.mca.gov.in/hcservices/> 3.



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

4. The Petitioner has come out with an averment that she owns a housing plot No.15 in S.No.168/1 and 2A, Inam Reddiapatti Village Panchayat, being an approved lay-out. The 20 ft road, shown in the lay-out is vested with the Panchayat. As a matter of fact, the afore-stated plot No.15 in S.No.168/1 and 2A measures 7531.12 sq.ft.

5. It appears that the Petitioner submitted a representation, dated 21.7.2017 to the First Respondent/The District Collector, Virudhunagar District, Virudhunagar to the effect that there is an encroachment by the owner in Plot No.11 and 12 in S.No.168/1 and 2A and access to his plot is very difficult and sought for necessary action. He also presented a petition to the First Respondent/District Collector, Virudhunagar District and the District Collector in the year directed the Third Respondent/The Tahsildar, Tahsildar Office, Virudhunagar to submit a report on the complaint within 60 days.

6. It is the case of the Petitioner that the Third Respondent/The Tahsildar, Tahsildar Office, Virudhunagar had not taken any action. Indeed, the Petitioner paid necessary charges to survey and mark the boundary to assess the encroachment, if any made. After that, the Third Respondent/The Tahsildar, Tahsildar Office, Virudhunagar District had issued a notice dated 3.5.2017 stating that he had not mentioned the survey number in the challan and further directed him to submit the original. Immediately, the Block Development Officer, had issued a reply, dated 12.6.2017 that necessary charges were paid and sent the original challan to the Third Respondent. The Third Respondent had submitted a report, dated 30.6.2017 to the effect that there is no temple in S.No.168/2A3 and patta stands in the name of one Ramasamy and that none including the Petitioner, have not gifted road to the panchayat.

7. It transpires that the Petitioner, on an earlier occasion filed WP.(MD)No.16064 of 2017 before this Court assailing the Third Respondent's proceedings, dated 30.6.2017 and this Court on 1.9.2017, quashed the impugned communication, dated 30.6.2017 and remitted the matter to the Third Respondent with a direction to arrive at a finding that if the road is a public road and if it so obstruction of the public road, cannot be allowed and that the Third respondent has to take necessary action in accordance with Law for removing the encroachment in question.

8. The grievance of the Petitioner is that the Third Respondent issued a notice, dated 10.11.2017 to the Petitioner (issued under Section 7 of the Tamil Nadu Land Encroachment Act, 1905) and the same is, according to the



Petitioner, is devoid of substance and merits. In fact, the Petitioner had caused a detail reply on 15.11.2017 stating that the notice is silent about the particulars and the extent of encroachment. Indeed, the Respondents served a notice on 28.11.2017 under Section 5 of the Tamil Nadu Land Encroachment Act, 1905 and that they are going to remove the encroachment on 5.12.2017, which is liable to be quashed, because of the reason of non-application of mind.

9. Per contra, it is the submission of the Learned Special Government Pleader appearing for the Respondents 1 to 3 that a survey was conducted by the Revenue Authorities and that from the Revenue Inspector's Report, there is an encroachment to an extent of 0.3 metres breadth and 3.3 metres length in S.No.168/2A3. In fact, the Petitioner, according to the Respondents, had put up a compound wall in the encroached Punjai land.

10. Admittedly, final orders were passed by the Third Respondent, dated 27.11.2017 (under Section 6 of the Tamil Nadu Land Encroachment Act, 1905) in the notice/final orders, dated 27.11.2017 of the Third Respondent, the Village is mentioned as Inam Kasi Reddiapatti, S.No.168/2A3, the detail of the land is mentioned as Punja land, total extent 0.08.10 Ares and enjoyment of the portion of the land as 15 cents and the nature of enjoyment is mentioned as compound wall.

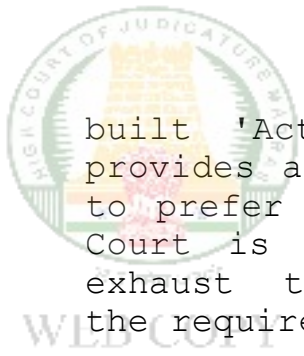
11. In view of the afore-stated fact that the final orders, dated 27.11.2017 was passed by the Third Respondent/The Tahsildar, Tahsildar Office, Virudhunagar District (under Section 6 of the Tamil Nadu Land Encroachment Act, 1905) the Petitioner as per Section 10 of the Tamil Nadu Land Encroachment Act, has to prefer an appeal to the District Collector from any decision or order passed by a Tahsildar or Deputy Tahsildar under this Act and etc. Even as per Section 10-A of the Act, 1905, under the caption 'Revision' (1) Any decision or order passed under this Act may be revised either suo-motu or on application.

(a) by the District Collector, if such decision or order was passed by the Deputy Tahsildar, Tahsildar or Collector;

(b) by the (Commissioner of Land Administration), if such decision or order was passed by any Officer (other than the appellate authority);

(c) by the State Government, if such decision or order was passed by (the appellate authority or) the (Commissioner of Land Administration) etc.

12. In the instant case on hand, the Petitioner has not preferred any appeal as against the impugned notice, dated 27.11.2017, passed by the Third Respondent/The Tahsildar, Tahsildar Office, Virudhunagar District. When that be the fact situation and also this Court keeping in mind a primordial fact that when in-



built 'Act' like the Tamil Nadu Land Encroachment Act, 1905 provides an effective, efficacious, viable and alternative remedy to prefer an appeal before the competent authority, then this Court is of the earnest opinion that the Petitioner has to exhaust that remedy of preferring an appeal keeping in tune with the requirement of the Tamil Nadu Land Encroachment Act, 1905.

13. In this regard, this Court deems it fit and proper to grant time to the Writ Petitioner to prefer an appeal as an 'aggrieved person' as against the order, dated 27.11.2017 passed by the Third Respondent, as per Section 10 of the Tamil Nadu Land Encroachment Act, 1905 before the District Collector, Virudhunagar District within a period of two weeks from the date of receipt of a copy of this order. In such an event of appeal being preferred by the Petitioner within the time adumbrated by this Court, the First Respondent/The District Collector, Virudhunagar District, Virudhunagar shall number the said appeal and to dispose of the said appeal on merits, after providing necessary opportunity of hearing, by adverting to the Principles of Natural Justice, including the opportunity for providing a personal hearing, and to pass a final order within a period of four weeks thereafter. It is open to the Petitioner to raise all factual and legal pleas before the First Respondent/The District Collector, Virudhunagar District, Virudhunagar, who shall advert to the same, at the time of passing of the final orders in the subject-matter in issue in an impartial, fair, just and in a dispassionate manner. Till such time, the Petitioner's possession in the subject-land shall not be disturbed by any one, in any manner.

14. With the above said observation(s) and direction(s), the Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
Virudhunagar District,
Virudhunagar.

2. The District Revenue Officer,
Collectorate Building,



3.The Tahsildar,
Tahsildar Office,
Virudhunagar.

+1cc to Special Government Pleader, SR.No. 90878
+1cc to M/S.P.Malini, Advocate SR.No. 90634

ORDER MADE IN
W.P. (MD) No. 22094 of 2017
and
W.M.P (MD) Nos. 18409 and
18410 of 2017
30.11.2017

VSN
JM/JC/SAR 4/14.12.2017/5P/6C