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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.12.2017

CORAM

THE HON'BLE MR.JUSTICE M.VENUGOPAL

and

THE HON'BLE MRS.JUSTICE R.THARANI

W.P. (MD) No.24002 of 2017

and

W.M.P. (MD) Nos.20172 and 20173 of 2017

P.Vembu

.. Petitioner

vs.

1. The District Collector,
Thanjavur District.
2. The Sub Collector,
Sub Collector Office,
Kumbakonam.
3. The Tahsildar,
Thiruvidaimarudur Taluk,
Thiruvidaimarudur,
Thanjavur District.
4. The Executive Officer,
Vepathur Town Panchayat,
Vepathur,
Thanjavur District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Ceritorari calling for the records relating to the impugned order in Na.Ka.2917/2016-A2, dated 11.12.2017 of the Third Respondent and quash the same.

For Petitioner : Mr.Prasanna Vinoth
for
Mr.AN.Ramanathan

For Respondents : Mr.M.Govindan
Special Government Pleader

O R D E R

Heard the Learned Counsel for the Petitioner and the Learned Special Government Pleader for the Respondents.

2. Admittedly, the Petitioner was issued with Section 6 notice under the Tamil Nadu Land Encroachment Act, 1905, in respect of



Survey No.460/1A, in Government Poramboke (Tank) measuring an enjoyment extent of 0.02.00 Hectares, out of total extent of 3.52 Hectares in 56, Vepathur-2 Village and the Petitioner is in enjoyment of upstairs house and she was directed to vacate from the said land because of the reason that without permission she is in enjoyment of the property in question.

3.As a matter of fact, the time for vacating from the subject property in issue, was fifteen days. Also, she was directed to remove the crops, the constructed buildings and the grown produce within the afore stated time, failing which, she was informed that the constructed buildings, the crops as well as the other produce would be forfeited.

4.The main grievance of the Petitioner is that after receiving the show cause notice under Section 7 of the Act, as legal heir of Pakirisamy, the Petitioner made a detailed objections, dated 29.10.2010 before the Third Respondent stating that her husband and his family members are only sweepers working in the fourth Respondent/Town Panchayat and earning a very meagre sum for their livelihood. Also, it was stated that their application for issuance of patta was pending before the Respondent as per the Resolution of the fourth Respondent/Town Panchayat.

5.According to the Petitioner, though their objections were submitted in person as well as through RPAD, the Third Respondent had not conducted any enquiry and infact, the Third Respondent had issued notice under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 without considering their valuable objections. In short, the plea taken on behalf of the Petitioner is that the Third Respondent had not followed the procedure prescribed under the Tamil Nadu Land Encroachment Act, 1905.

6.At this stage, the Learned Counsel for the Petitioner brings it to the notice of this Court that the show cause notice, dated 25.10.2017 (under Section 7 of the Tamil Nadu Land Encroachment Act, 1905) was issued by the Revenue Inspector, Thiruvidadaimarudur in the name of her deceased husband Pakirisamy, stating that they are encroachers in the afore said Survey number and they should offer their explanation on or before 31.10.2017 etc.

7.It is to be noted that the Petitioner through her Representation, dated 29.10.2010, had stated that she had constructed an upstairs house in Government Poramboke Land bearing Survey No.460/1A and that she had secured Electricity connection, Family Card and Aadhaar Card etc.

8.Per contra, it is the submission of the Learned Counsel for the Respondent No.1 to 4 that the Petitioner himself in his Representation, dated 29.10.2010 had stated that he had constructed an upstairs house in a Government Poramboke Land



measuring an extent of 0.02.00 Hectares in Survey No.460/1A and as against the impugned order, dated 11.12.2017, the Petitioner is to prefer an appeal before the First Respondent/District Collector, Thanjavur District, by filing an appeal.

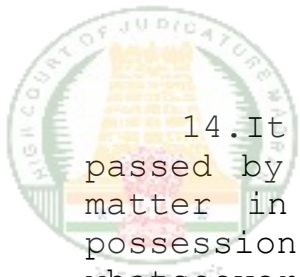
9.Also, it is represented on behalf of the Respondents No.1 to 4 that the Petitioner in her explanation/Representation/objection, dated 29.10.2010, had stated that he had constructed a upstairs house in Government Poramboke Land measuring an extent of 0.02.00 Hectares in Survey No.460/1A.

10.By means of reply, the Learned Counsel for the Petitioner submits that the Petitioner had made a Representation before the First Respondent/District Collector, seeking issuance of pata and based on the Resolution dated 12.09.2005 passed by the fourth Respondent, the Petitioner had applied for patta and the Petitioner's request for patta is still pending as on date.

11.It comes to be known that as against the impugned order dated 11.12.2017, of the Third Respondent/Tahsildar, Thiruvidadaimarudur Taluk, Thanjavur District, an appeal shall lie to the First Respondent/District Collector and in the instant case, the Petitioner has not preferred an appeal before the competent authority (As a dissatisfied person) in regard to the impugned notice, dated 11.12.2017.

12.Undoubtedly, this Court, is of the considered opinion that as against the impugned order dated 11.12.2017, the Petitioner's husband, who is no more, the Petitioner being his wife, in Law, as per Section 10 of the Tamil Nadu Land Encroachment Act, 1905, is entitled to prefer a statutory appeal before the First Respondent/District Collector, Thanjavur District. Accordingly, this Court, directs the Petitioner to prefer an appeal before the First Respondent/District Collector, Thanjavur District, within a period of two weeks from the date of receipt of a copy of this order. Soon after filing of the appeal by the Petitioner, the First Respondent is directed to look into the said appeal and to dispose of the same, by passing a reasoned, speaking order after applying his judicial thinking mind, by taking into account of the factual and legal pleas, raised by the Petitioner, within a period of four weeks thereafter.

13.The First Respondent/District Collector, shall dispose of the appeal in question, within the time adumbrated by this Court after providing adequate opportunity of hearing to the Petitioner by following the Principles of Natural Justice. Moreover, the First Respondent/District Collector, is directed to pass a final order in question in a free, just, fair, impartial and ~~uninfluenced and untrammelled~~ manner, uninfluenced and untrammelled with any of the observations made by this Court in this writ petition.



14. It is made candidly clear that till the final orders are passed by the First Respondent/District Collector in the subject matter in issue, the Petitioner shall not be disturbed of his possession in the subject property by anyone, in any manner, whatsoever.

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15. With the aforesaid Direction(s) and Observation(s), this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To:

1. The District Collector,
Thanjavur District.
2. The Sub Collector,
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3. The Tahsildar,
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Thiruvidaimarudur,
Thanjavur District.
4. The Executive Officer,
Vepathur Town Panchayat,
Vepathur,
Thanjavur District.

+1cc to Mr. AN. Ramanathan, Advocate Sr.No. 94900

+1cc to Spl. Government Pleader Sr.No. 94915

RJ2

VB/GT/SAR4/04/01/2018/4P/7C

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