



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.10.2017

CORAM:

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

W.P. (MD) No.10623 of 2013
and
M.P (MD) No.1 of 2013

V.Meenal

: Petitioner

. vs .

1. The District Collector,
Sivagangai District,
Sivagangai.
2. The Tahsildar,
Karaikudi Taluk,
Karaikudi,
Sivagangai District.
3. The President,
Amaravathipudur Village Panchayat,
Amaravathi Pudur,
Sakkottai Panchayat Union,
Karaikudi Taluk,
Sivagangai District.
4. The Divisional Deputy Tahsildar,
Karaikudi Division,
Karaikudi,
Sivagangai District.

5.S.Vasudevan

: 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 pertaining to the impugned order passed by the second respondent herein on 07.06.2013 in Na.Ka.No.Aa5/2041/2013 and to quash the same.

For Petitioner	: M/s.R.Vijayakumar
For Respondents	: Mr.M.Govindan
1, 2 and 4	Spl. Govt.Pleader
For Respondent-3	: No appearance
For Respondent-5	: M/s.P.Mahendran

**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 pertaining to the impugned order passed by the second respondent herein on 07.06.2013 in Na.Ka.No.Aa5/2041/2013 and to quash the same.

2.Heard the learned counsel appearing for the Petitioner and learned Special Government Pleader appearing for the respondents 1,2 and 4 and the learned Counsel appearing for the fifth respondent. Though notice was duly served on the third respondent, there is no representation for him either in person or through his counsel.

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

4.According to the Petitioner, the Second Respondent/The Tahsildar, Karaikudi Taluk, Karaikudi, Sivagangai District had failed to see that the order passed by this Court in W.P.No.2003 of 2013, dated 21.01.2013 was not for removal of encroachment, but the said order only had directed the Second Respondent to conduct an enquiry and pass orders on merits.

5.Advancing his arguments, the Learned Counsel for the Petitioner points out that the Second Respondent had erred in holding that the impugned order, dated 7.6.2013 that the Fifth Respondent had obtained an order from this Court for removal of encroachment in S.No.217/1.

6.The principal stand taken on behalf of the Petitioner is that the Second Respondent had failed to appreciate that the Petitioner as Plaintiff, had obtained a decree in O.S.No.119 of 2008, on the file of the learned Additional District Munsif, Karaikudi and in reality, the Tamil Nadu Government, represented by the District Collector, Sivagangai and the Tahsildar, Karaikudi Taluk, Sivagangai District were the parties to the said suit, which binds the *inter-se* parties. In this connection, it is represented on behalf of the Petitioner the decree is obtained from a competent Civil Court in O.S.No.119 of 2008, dated 13.10.2009 against the Government of Tamil Nadu, represented by the District Collector, Sivagangai District and the Tahsildar, Karaikudi Taluk, Sivagangai District(R1 and R2), then the said decree takes a pre-dominant role than that of the order passed by this Court in W.P.No.2003 of 2013, dated 21.01.2013, wherein, this Court, without going into the merits of the representation of the Petitioner, dated 21.01.2013 forced to direct the Second Respondent(namely the Tahsildar, Karaikudi Taluk, Sivagangai District) to consider the representation of the Petitioner by affording an opportunity to him as well as to the



Fourth Respondent therein (P.Venkatachalam) and also to the other relevant parties by issuing notice to them and pass orders on merits and in accordance with law within a period of twelve weeks from the date of receipt of a copy of the order.

7. It is not in dispute that the Petitioner as Plaintiff, had obtained a decree on 13.10.2009, dated O.S.No.119 of 2008, filed by her against the respondents 1 and 2. The said decree between inter-se parties has become final and the same is binding as per Section 43 of the Indian Evidence Act, 1872.

8. The other plea taken on behalf of the Petitioner is that the respondents 1 to 4 have no jurisdiction to conduct an enquiry under the Tamil Nadu Land Encroachment Act, 1905 pertaining to S.No.217/1, when a competent Civil Court had declared the title of the Petitioner as against the respondents 1 and 2.

9. In response, it is the submission of the learned Special Government Pleader appearing for the respondents 1,2 and 4 that in fact, the Petitioner as Plaintiff had obtained a decree from the competent Civil Court in O.S.No.119 of 2008, dated 13.10.2009 against the Respondents 1 and 2. Further, as against the said decree in O.S.No.119 of 2008, dated 13.10.2009, no appeal has been preferred by the Respondents 1 and 2 and the said decree as on date has become final.

10. The learned Special Government Pleader appearing for the Respondents 1,2 and 4 brings it to the notice of this Court, an Urgent Memorandum, dated 7.6.2013 of the Second Respondent/The Tahsildar, Karaikudi Taluk, Sivagangai District addressed to the Zonal Deputy Tahsildar, Karaikudi and the said communication is only a communication between two Officers of the Government Department and resting upon the same, filing of the Writ Petition is impermissible in law.

11. At this stage, this Court on a closer scrutiny of the said Official Memorandum of the Second Respondent/The Tahsildar, Karaikudi Taluk, Sivagangai District, dated 7.6.2013, is of the considered view that the Second Respondent in the said inter-departmental communication had only, among other things, mentioned that the notices under Sections 5 and 7, obviously under the Tamil Nadu Land Encroachment Act, 1905, was to be served and after removing the encroachment, a report was sought to be submitted by the Zonal Deputy Tahsildar, Karaikudi.

12. It is to be noted that Section 5 of the Tamil Nadu Land Encroachment Act, 1905 speaks of 'Liability of person unauthorizedly occupying the land to penalty after notice'. Section 7 of the 'Act' enjoins 'the issuance of prior notice to a person in occupation'. As such, from the ingredients of Section 7 of the Act, 1905, it is quite clear that the non-issue of notices will vitiate the proceedings concerned. But, in the instant case on hand,



no notice was issued to the Petitioner or to the others under the relevant provisions of the Tamil Nadu Land Encroachment Act, 1905. But the Petitioner has rushed to this Court on the basis of the Urgent Memorandum of the Second Respondent/The Tahsildar, Karaikudi Taluk, Sivagangai District, dated 7.6.2013.

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13. In view of the fore-goings and also in the light of the discussions as afore-stated and also, this Court taking note of the facts and circumstances of the present case, in an integral manner comes to an irresistible conclusion that the Second Respondent is to issue a Show-Cause Notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 and after obtaining their explanations/objections/remarks, is to look into the same in a fair, free, unbiased and in a dispassionate manner within a period of two weeks from the date of receipt of a copy of this order and pass final orders in the subject-matter in issue after providing necessary opportunity to the Petitioner and others concerned, if any, within a period of four weeks thereafter.

14. The Second Respondent is directed to take into account of the decree in O.S.No.119 of 2008, dated 13.10.2009 obtained from the competent Civil Court against the Respondents 1 and 2 on the file of the Trial Court and at the time of passing of final orders, he has to advert to the same by dealing with the pros and cons of the matter. It cannot be gainsaid that it is open to the Petitioner to raise all factual and legal pleas before the Second Respondent and to seek redressal of her grievance in the manner known to law and in accordance with law. Till such time, the Second Respondent or any other Government Authority shall not disturb the possession of the Petitioner.

15. 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 (P&A)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
Sivagangai District,
Sivagangai.

2. The Tahsildar,
Karaikudi Taluk,
Karaikudi,
Sivagangai District.



3. The Divisional Deputy Tahsildar,
Karaikudi Division,
Karaikudi,
Sivagangai District.

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+ 1 CC TO Mr.R.VIJAYAKUMAR, ADVOCATE IN SR No. 83884
+ 1 CC TO Mr.P.MAHENDRAN, ADVOCATE IN SR No. 83970
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 84217

VSN

TE/KP/SAR-IV : 06/11/2017 : 5P/7C

ORDER MADE IN
W.P. (MD) No.10623 of 2013 and
M.P (MD) No.1 of 2013
26.10.2017