

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.3026 of 2018
and
W.M.P.No.3697 of 2018

K.Nallammal ... Petitioner
Vs.

1. The District Collector,
Salem District, Salem.
2. The Revenue Divisional Officer,
Sankagiri,
Edappadi Taluk, Salem District.
3. The Tahsildar,
Edappadi Taluk,
Edappadi, Salem District. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records of the first respondent by his proceedings dated 02.02.2018 and made in Na.Ka.26848/2017 K3 dismissing the appeal filed under Section 10 of the Tamil Nadu Land Encroachment Act and quash the same as illegal and without jurisdiction.

For petitioner : Mr.G.Nagarajan

For respondents: Mr.R.Udaya Kumar, Addl.G.P.

ORDER

(The Order of the Court was made by M.Venugopal, J)

The petitioner has come forward with this Writ Petition praying for issuance of a Writ of Certiorari to call for the records of the first respondent by his proceedings dated 02.02.2018 and made in Na.Ka.26848/2017 K3 dismissing the appeal filed under Section 10 of the Tamil Nadu Land Encroachment Act and quash the same as illegal and without jurisdiction.

2. Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondents.

3. It is the case of the petitioner that she is the absolute owner of the land comprised in S.No.457/14 measuring an extent of 0.0070.0 Sq.Mtrs. situated in Koranampatti Village, Edappadi Taluk, Salem District. She has obtained the land by way of assignment from the third respondent/Tahsildar, as per proceedings dated 16.11.2012. The stand of the petitioner is that the Revenue Inspector of Konganapuram has issued a notice, dated 12.05.2017 under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 to her stating that she is under occupation of the aforesaid Government land and why action should not be initiated against her to evict her from the said land comprised in S.No.457/14. It is to be noted that as against the said notice issued under Section 7, the petitioner filed W.P.No.14405 of 2017 before this Court and in the meanwhile, the third respondent had passed an order dated 05.06.2017 under Section 6 of the said Act, directing her to vacate from the land in question.

4. It is further stated by the petitioner that while hearing the said W.P.No.14405 of 2017, by order dated 11.07.2017, this Court permitted the petitioner to prefer statutory appeal under Section 10 of the said Act. Accordingly, an appeal was filed before the first respondent and by means of order dated 02.02.2018, the said appeal was dismissed by the first respondent on an erroneous ground. As such, the petitioner has filed the present Writ Petition challenging the said order passed by the first respondent, dated 02.02.2018.

5. Per contra, by filing counter affidavit, it is the submission of the learned Additional Government Pleader appearing for the respondents that pursuant to the policy decision taken by the State Government to establish an industrial park at Edappadi Taluk to provide rural employment, the Government has issued an order to form SIDCO Industrial Estate at Edappadi Taluk. Based upon that, the General Manager/District Revenue Officer, Small Industries Development Corporation (SIDCO), Chennai, in D.O. Letter Na.Ka.No.4597/N-1/2013, dated 30.03.2015, had requested the first respondent-District Collector, Salem to identify suitable lands for establishment of SIDCO Industrial Park. Furthermore, the lands were earmarked for this park in Koranampatti Village of Edappadi Taluk. It is the stand of the respondents that the lands in S.No.457/3 is sub-divided as S.Nos.457/9, 14, 15, 16 and 24 to 35 and they were converted as Natham from un-assessed waste in order to issue Patta to the encroachers and the Patta was also issued to five persons in respect of S.Nos.457/14, 15, 28, 31 and 34, based upon their eligibility. Apart from that, according to the respondents, these cluster of houses fall in the middle of the proposed industrial park. There is no other option left

out than shifting all the persons to near-by alternative site, which is just 100 Metres away, namely Vellalapuram Village, from this Survey Number. Hence, the second respondent/Revenue Divisional Officer, Sankari had cancelled the house site pattas issued to five persons in this land and simultaneously, alternative house site patta had also been issued to all the dwellers as mentioned under:

Sl.No	SF.No.	Name	Remarks	Village
1	457/14	Nallammal W/o Kandasamy (writ petitioner)	House site patta issued	Vellalapuram
2	457/15	Mariammal W/o Kandasamy (concubine of writ petitioner)	House site patta issued	
3	457/28	Palaniammal W/o Balan	House site patta issued	
4	457/31	Palaniammal W/o Mani	House site patta issued	
5	457/34	Pachaiammal W/o Chettiannan	House site patta issued	

Out of the aforesaid five persons, the person in Sl.No.2 is not residing and the house was deserted. In respect of the persons in S.Nos.3 to 5, pattas issued to alternative site, had been accepted and they have shifted their residence to the newly allotted house site at S.No.426/2 of Vellalapuram Village.

6. Apart from the above, (i) Chinnapappa, W/o Nagaraj, (ii) Palaniammal, W/o Sundaram, (iii) Pavayee, W/o Ananigounder, (iv) Palaniammal, W/o Palani, have also encroached these lands and not issued with patta earlier and now, they were issued with patta to alternative site and they have also shifted their residence. Out of 5 patta holders, 3 have received their pattas and shifted their residence to the alternative site with others. In addition to this, the first respondent-District Collector has taken steps to give them all Green House under the Chief Minister's Schemes. The petitioner is also one among them and she initially agreed to shift her residence to the alternative site and gave statement before the Revenue Divisional Officer, Sankari. However, she had filed the Writ Petition at the

instigation of wrong guidance.

7. It is to be noted that since the petitioner failed to shift her residence to the alternative site, a notice under Section 7 of the said Act has been issued by the Revenue Inspector, Konganapuram on 12.05.2017 and notice under Section 6 of the said Act was issued by the Tahsildar on 05.06.2017. Aggrieved by the issuance of the said notice, the petitioner filed W.P.No.14405 of 2017 before this Court and this Court, on 11.07.2017 has issued direction to the petitioner to prefer appeal under Section 10 of the said Act, 1905, before the first respondent-District Collector. A petition was presented by the petitioner based upon the direction issued in W.P.No.14405 of 2017, before the first respondent-District Collector on 21.08.2017 and she was called upon for personal hearing on 04.12.2017. After considering the contentions of the petitioner and also taking into account all the materials available on record and also with application of mind, the District Collector has passed order on 02.02.2018, rejecting the request of the petitioner and only against the rejection order dated 02.02.2018 of the District Collector, the writ petitioner has filed the present Writ Petition on vexatious ground to stop evicting her from the land in S.No.457/14.

8. The learned Additional Government Pleader appearing for the respondents submitted that it is always open for the writ petitioner to accept the alternative house site patta in S.No.426/6 at Vellalapuram Village and consequently, she had right to shift her residence from S.No.457/14 which was handed over to SIDCO. However, the petitioner is refusing to accept the same and hence, the learned Additional Government Pleader prayed for passing appropriate order by this Court to evict the petitioner from S.No.457/14.

9. Learned Additional Government Pleader appearing for the respondents categorically pointed out that one of the conditions in regard to the allotment of house site patta to the petitioner, namely Condition No.9 states that the Revenue Divisional Officer is empowered to cancel and take possession of the land which was already given to the pattadars, if it is required for public purpose. Since the present land in possession of the petitioner is required for public purpose, the second respondent-Revenue Divisional Officer, Sankari had cancelled the house site patta on 10.03.2017, which was already given by the third respondent in the year 2012 for the purpose of establishing Industrial Park through SIDCO at Koranampatti Village, Edappadi. In short, the plea of the respondents is that the land is required purely for public interest at large, which will give more rural employment opportunities in the near future.

10. Considering the fact that the petitioner's land in S.No.457/14 is very much required for public purpose, namely for establishment of Industrial Park through SIDCO at Koranampatti Village and also this Court, keeping in mind

another primordial fact that the petitioner was provided with an alternative site, this Court is of the view that the petitioner cannot any longer squat on the land in question and she is bound to be evicted from the said place and she is to move to the alternative place which has been provided to her, which is an equitable relief being granted to the petitioner by the respondents. Viewed in that perspective and looking at from any angle, the Writ Petition is devoid of merits.

11. In fine, the Writ Petition is dismissed, leaving the parties to bear their own costs. Consequently, W.M.P. is closed. It is open for the respondents 1 to 3 to take steps to evict the petitioner from the land in question, by taking the assistance of the Police concerned, if the situation so warrants. It is made quite clear that if the petitioner is not desirous of moving to the alternative site provided by the respondents within two weeks from the date of receipt of a copy of this order, it is open for the authorities to allot that alternative site which was given to the petitioner, to a different eligible person as per the seniority maintained by them in this regard, if any.

Sd/-

Assistant Registrar(CS III)

//True copy//

Sub Assistant Registrar

cs

To

1. The District Collector,
Salem District, Salem.
2. The Revenue Divisional Officer,
Sankagiri,
Edappadi Taluk, Salem District.
3. The Tahsildar,
Edappadi Taluk,
Edappadi, Salem District.

+2cc to Government Pleader SR.No.12151, 16306

W.P.No.3026 of 2018

GN(15/03/2018)