

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.02.2018

Coram

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

W.P.No.3037 of 2018 and
W.M.P.No3709 of 2018

P.Amudha

.. Petitioner

Vs.

1. The State of Tamilnadu
Rep. By its Secretary,
Revenue Department,
Fort St. George,
Chennai - 600 009
2. The District Collector,
Dharmapuri District,
Dharmapuri - 636 705
3. The Tahsildar,
Office of Tahsildar,
Dharmapuri - 636 701
4. The Revenue Inspector,
Krishnapuram,
Dharmapuri Taluk,
Dharmapuri District

..Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Mandamus directing the Respondents herein not to evict the Petitioner from D.No.1/10A, in S.No.130, Melmodakkeri Village, Vellolai Panchayat, Solakkottai Post, Dharmapuri Taluk and Dharmapuri District, in the absence of any imminent need of Malai Poramboke Land for any public purpose for which it is needed and without following due process of law.

For Petitioner	: Mr.S.Sathiaseelan
For Respondents	: Ms.M.Lalitha
	Government Advocate

O R D E R

[Order of the Court was made by M.VENUGOPAL, J.]

Heard the Learned Counsel for the Petitioner and the Learned Government Advocate for the Respondents 1 to 4.

2. According to the Petitioner, she is residing at 1/10-A, Melmodakkeri Village, Vellolai Panchayat, Solakkottai Post, Dharmapuri Taluk, Dharmapuri District situated in Survey No.130 and the said survey number is classified as 'Malai Poramboke' and she is in possession and enjoyment of 0.50 cents out of 1650 acres in Malai Poramboke land along with hundreds of other residents from the year 2002 without any interruption till date.

3. The Petitioner has constructed tile house and had planted teak, palm, jack-fruit, neem trees, herbal plants and also growing flower gardens in the land by investing about Rs.3,50,000/-. From the year 2002, the Petitioner is in continuous possession and enjoyment of the occupied land for more than 15 years and also rearing cattle in a separate cattle shed. Moreover, the residential building was constructed in accordance with plan and the Petitioner has obtained Electricity Service Connection bearing No.00-004-013-170 in the year 2005 from TANGEDCO and paying EB charges regularly. The building was assessed by the Vellolai Panchayat and property tax was imposed and that the Petitioner was paying property tax and Door No.1/10A,1/10B was allotted.

4. It comes to be known that for the benefit of residents of Malai Poramboke residents, the Vellolai Panchayat had constructed overhead tank and supplying water to the residents from the aforesaid tank through pipeline. Thus, the Vellolai Panchayat had provided all the amenities and facilities needed for the aforesaid residents of Malai Poramboke. As a matter of fact, the adjacent private patta land owner residing on the fringes of the Petitioner's occupied land in Malai Poramboke from the year 2016 insisted upon the Petitioner to vacate from the occupied land and buildings etc., as they are in need of the adjacent Malai Poramboke land. Because of the reason that the Petitioner had not acceded to the request for vacating the said Malai Poramboke land, in which she had constructed house etc., adjacent private owners had become jealous and developed enmity towards the Petitioner and starting troubling the Petitioner by engaging rowdy elements. As the Petitioner and her family have no other shelter or place to reside and to rear the cattle, they endured the continuous troubles being thrown at them and started approaching the Revenue Authorities for issuance of Patta to their land relying on several Government Orders issued by the 1st Respondent. The representation for patta dated

11.12.2017 is still pending for consideration before the 3rd Respondent.

5. Since the Petitioner has no other go except to live in Malai Poramboke land enduring the threats and troubles through rowdy elements, in these circumstances, the adjacent private patta land owner, inspite of employing rowdy elements to vacate, of late, approached the Government Authorities and pressurised them to vacate and demolish the Petitioner's above land and building with malafide intention to enjoy the Petitioner's occupied land after eviction. The Revenue Authority also succumbed and buckled to the pressure of the adjacent private patta land owner, consequently, the Petitioner's occupied land and building alone targetted out of the hundreds of residents of Malai Poramboke Land. To that effect, the 3rd and 4th Respondents herein pretended to invoke the provisions of the Tamilnadu Land Encroachment Act, 1905 only against the Petitioner, which is nothing but an eye wash action to remove the encroachment to facilitate the private patta land owners to occupy the subject matter of land and to show the higher officials and the Government that the encroachment will be removed in the implementation of Rule of Law.

6. The stand of the Petitioner is that the Revenue Authorities, namely, the 3rd and 4th Respondents herein knowing fully well that the electricity service connection and property tax assessment etc., stand in the name of the Petitioner had issued notice under Section 7 to the Petitioner's husband on 29.11.2017 requiring explanation from the Petitioner's husband stating without any permission, they are in possession and enjoyment of the Government property and why the levy of assessment on the unauthorised occupied lands can be imposed under Section 3 of the Tamilnadu Land Encroachment Act, 1905.

7. The main grievance of the Petitioner is that for the notice issued by the concerned Revenue Authority under Section 7 dated 29.11.2017, a reply was issued by the Petitioner's husband on 12.12.2017 stating that all the record namely, Electricity Service Connection, Property Tax etc., stand in the name of the Petitioner and her husband requested the Authorities that he is not the competent person to reply the above notice under Section 7 of the Act. In fact, the 3rd Respondent, without affording opportunity of personal hearing and without even mentioning the reply given to the show cause notice by the Petitioner's husband, the impugned notice dated 13.12.2017 was issued under Section 6 of the Tamilnadu Land Encroachment Act. Hence the Petitioner has filed the present Writ Petition not to evict her without following due process of Law.

8. It is to be noted that the Petitioner filed a civil suit in O.S.No.320 of 2017 prior to Section 6 of Tamilnadu Land

Encroachment Act, 1905 proceedings and the same is pending. Further, it is represented on behalf of the Petitioner that a notice was served on the 2nd and 3rd Respondents as on the date of partial demolition of Petitioner's occupied land.

9. In this connection, it may not be out of place to make a relevant mention that the payment of electricity charges, possession of Voter I.D, Ration Card, Adhar Card, Payment of Tax to the Municipal Corporation will not shower any benefits to a person to claim the property. The very fact that the Petitioner's husband has only sought for issuance of patta, which evidently shows that the Petitioner is not the owner of the subject land.

10. It is not in dispute that the 4th Respondent had issued a notice dated 29.11.2017 addressed to the Petitioner's husband, namely, Periyasamy in respect of Vellolai Village, Malai Poramboke measuring an extent of 0.20.0. In the said notice, the Petitioner's husband was called upon to show cause either in person or through written representation on or before 13.12.2017 either before the Revenue Inspector, Krishnapuram or before the Collector, for which, the Petitioner's husband had given a detailed reply stating that in the land in question, they put up a house valid about Rs.3,00,000/- and they also constructed cattle shed and they are in occupation from the year 2002. In fact, his wife, namely, the Writ Petitioner, is enjoying the fruits of jack tree, nelli, Teak, and Palm etc., A reading of the reply dated 12.12.2017 addressed by the Petitioner's husband to the District Collector, Dharmapuri clearly shows that the Petitioner's husband had informed the District Collector, Dharmapuri to apprise his wife about the encroachment and in regard to the forfeiture of articles etc., But, without taking into account the written representation of the Petitioner's husband dated 12.12.2017, the Tahsildar, Dharmapuri / 3rd Respondent had passed the impugned order under Section 6 of the Tamilnadu Land Encroachment Act on 13.12.2017 requiring the Petitioner's husband to vacate the Survey No.130 in Vellolai Village, Malai Poramboke measuring an extent of 0.20 within a period of 15 days from the date of receipt of notice.

11. When the Petitioner's husband is not concerned with the Survey no.130, Malai Poramboke measuring an extent of 0.20.0 and when the Petitioner's husband had given a detail reply dated 12.12.2017 addressed to the District Collector, Dharmapuri stating that his wife (namely, Writ Petitioner) is only concerned with the property in question and regarding the same, she may be apprised of, in the subject matter in issue and inspite of looking into the objections and without considering the tenor and spirit of the representation of the Petitioner's husband, it appears that the 3rd Respondent / Tahsildar, Dharmapuri had issued Notice under Section 6 of the Tamilnadu

Land Encroachment Act dated 13.12.2017 addressed not to the Petitioner but to the Petitioner's husband, which in the considered opinion of this Court, there appears to be a non application of thinking mind on the part 3rd Respondent / Tahsildar, Dharmapuri. As such, this Court on this simple ground alone is inclined to interfere with the impugned notice dated 13.12.2017 issued by the 3rd Respondent / Tahsildar, Dharmapuri and sets aside the same.

12. In fine, the Writ Petition is allowed. The Impugned Notice dated 13.12.2017 issued by the 3rd Respondent / Tahsildar, Dharmapuri is hereby set aside by Court for the reasons assigned in the present Writ Petition. Consequently, connected Miscellaneous Petition is closed.

13. Before parting with the case, this Court grants liberty to the 3rd Respondent / Tahsildar, Dharmapuri to issue fresh Notice to the Petitioner, as per relevant provisions of Tamilnadu Land Encroachment Act, 1905 and to proceed further, of course, after taking into account the objections of the Petitioner. For the fresh Notice to be issued by the 3rd Respondent, the Petitioner is granted two weeks time to furnish reply from the date of receipt of said notice. Thereafter, the 3rd Respondent shall look into the objections of the Petitioner, (and not the Petitioner's husband) and to provide opportunity of personal hearing to her and others including the complainant, if any, by adhering to the 'Principles of Natural Justice' besides passing a reasoned speaking order on merits in a qualitative and quantitative terms, after adverting to the factual and legal points raised by the Petitioner in her objections. The said final orders shall be passed by the 3rd Respondent within a period of six weeks thereafter. Furthermore, this Court points out that if within two weeks time specified by this Court, the Petitioner had not furnished a reply to the fresh notice being issued by the competent Revenue Authority, then, the non furnishing of reply should also find a place in the final order to be passed by the 3rd Respondent. Also, till such time, the Petitioner's occupation and enjoyment in Survey No.130, Malai Poramboke, measuring an extent of 0.20.0 shall not be disturbed by any one.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

ssd

To

1. The Secretary, State of Tamilnadu
Revenue Department,
Fort St. George,
Chennai - 600 009

2. The District Collector,
Dharmapuri District,
Dharmapuri - 636 705

3. The Tahsildar,
Office of Tahsildar,
Dharmapuri - 636 701

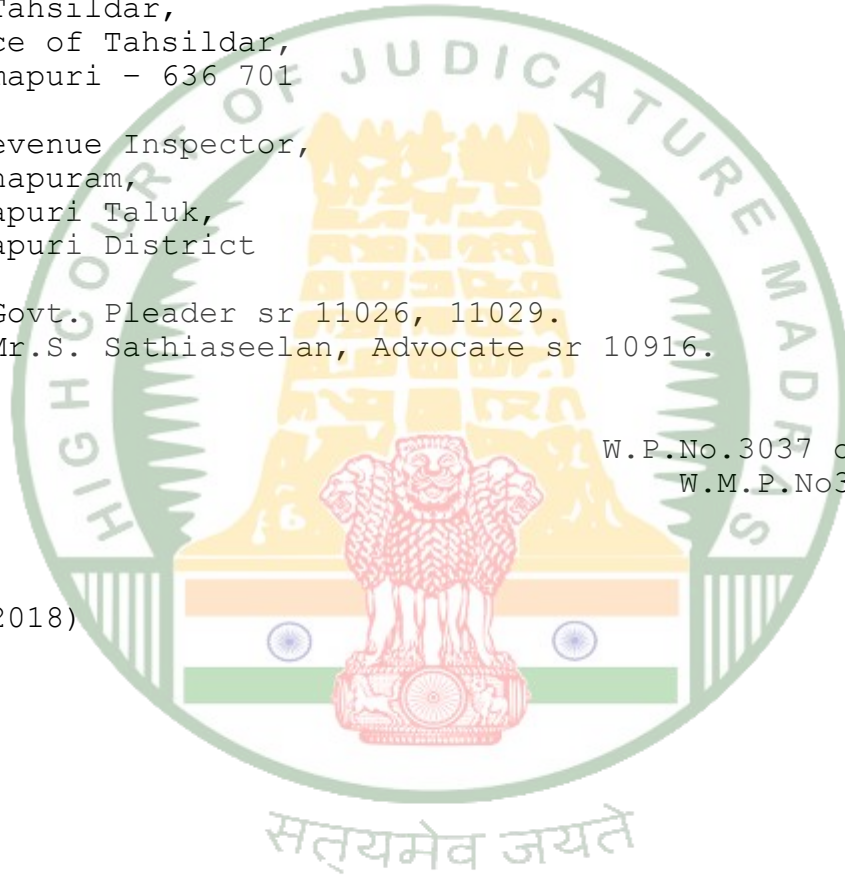
4. The Revenue Inspector,
Krishnapuram,
Dharmapuri Taluk,
Dharmapuri District

+1 CC to Govt. Pleader sr 11026, 11029.

+1 CC to Mr.S. Sathiaseelan, Advocate sr 10916.

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PVS (CO)
SP(19/02/2018)



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