

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.03.2018

Coram

The Hon'ble Mr. Justice M. Venugopal
and
The Hon'ble Mr. Justice S. Vaidyanathan

W.P.No.34226 of 2017
and
W.M.P.No.38110 of 2017

R.Vandana

...Petitioner

Vs

1. The Assistant Divisional Engineer,
The Tamil Nadu Highways Department,
Ambattur Sub Division,
Avadi, Chennai - 600 054.
2. The Divisional Engineer,
Thiruvalur (H) C & M Division,
The Tamil Nadu Highways Department,
Thiruvallur.

....Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of certiorari, to call for records of the first respondent, dated 12.12.2017, in Memorandum No.1006/2017/C2 and to quash the same.

For Petitioner : Mr.R.Mohana Raja

For Respondents : Mr.A.N.Thambidurai
Special Government Pleader

O R D E R

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

Heard Mr.R.Mohana Raja, the Learned Counsel appearing for the Petitioner and Mr.A.N.Thambidurai, the Learned Special Government Pleader appearing for the respondents.

2. According to the Petitioner, her father is carrying on business under the name and style 'Mahaveer Agencies'. They are in permanent possession and enjoyment of the property in Door No.3/13, Bharathi Salai, Ramapuram, Chennai- 600 089. The

property measures an extent of 1609.5 sq.ft. (74 x 21.9). By way of sale agreement in the year, 2005 from one Subramanian, the property was purchased. The property has been assessed to property tax and also assigned a door number. The Petitioner is in possession and enjoyment of the property, in question, without any hindrance, whatsoever. The petitioner has Electricity and Water Service connections to the aforesaid property, and she is paying the property tax in her name.

3. It comes to be known that, the Petitioner had submitted an Application, seeking issuance of Patta before the concerned Authority. The version of the Petitioner is that, the Local Authorities and other Organizations have recommended for issuance of Patta, and her request for seeking Patta is still pending with the concerned Authority. In the meanwhile, the First Respondent/Assistant Divisional Engineer, Tamil Nadu Highways Department, Thiruvallur, had issued a Show Cause Notice, dated 24.09.2016, to the Petitioner, as per Section 28 (2) (ii) of Tamil Nadu Highways Act, 2001, (hereinafter, referred to as 'Act'), inviting her explanation against the proposed eviction. A detailed written objections were filed by the Petitioner along with necessary documents on 25.10.2016. The First Respondent had received such objections and acknowledged the same. The petitioner reliably learnt that the action initiated as per the Show Cause Notice, dated 24.09.2016, was dropped. However, to her shock and surprise, the First Respondent had issued an impugned Notice, dated 12.12.2017, under Section 28 (2) (ii) of the Act, which was served on her on 22.12.2017. The final Notice for Eviction issued by the First Respondent, according to the Petitioner, is without considering her objections.

4. The Learned Counsel appearing for the Petitioner submits that, the impugned Order, dated 12.12.2017, passed by the First Respondent is patently an illegal one and violates all cannons of justice, equity and fair play.

5. The Learned Counsel projects an argument that, the First Respondent had passed the impugned Order, without considering any of the objections raised by the petitioner. Also that, the Petitioner's Application seeking Patta is pending consideration in the hands of the Authorities concerned and when the petitioner is having her own legal right over the property, in question, the issuance of the impugned Order/Notice, dated 12.12.2017, by the First Respondent is against the Principles of Natural Justice. Hence, the Petitioner has filed the present Writ Petition, impugning the Order, dated 12.12.2017, passed by the First Respondent.

6. Per contra, it is the submission of the Learned Special Government Pleader appearing for the Respondents 1 and 2 that

the property mentioned by the Writ Petitioner, is located in S.No.239/2, which is classified as ''Eri'' as per the Revenue Record, and the same was accepted by the petitioner, in her objections, dated 25.10.2016. Therefore, for the property, which is located in a Government land, Patta will never be issued by the Revenue Officials in the name of the petitioner. Also that, the land, being a Government land, cannot be a subject matter of land between the two parties, and in the light of the same, the Petitioner's vendor has no right over the property, especially, to alienate to and in favour of the Petitioner. In this regard, the Writ Petitioner cannot rely on such an illegal sale and seek any right, whatsoever, in the eye of law.

7. The Learned Special Government Pleader for the Respondents 1 and 2 brings it to the notice of this Court that the subject land is maintained by the Greater Chennai Corporation, and therefore, the Application of the Petitioner was forwarded to the Assistant Executive Engineer, Valasaravakkam, Zone - XI, Greater Chennai Corporation, vide Assistant Engineer (H) C&M, Poonamallee, Letter No. Encroachment/ 2016/A.E./29.12.2016 and 10.04.2017, to take necessary action, since the ownership of the land belongs to the Greater Chennai Corporation.

8. Since no action was taken by the Official of the Greater Chennai Corporation, viz., the Assistant Executive Engineer, Zone - XI, Greater Chennai Corporation, a Letter was addressed to the Tamil Nadu Urban Local Bodies, Ombudsman Saidapet, Chennai-2, vide Lr.No.Encroachment/2016/ODR/dated 28.03.2017, requesting to apply for necessary instructions being issued to the Assistant Executive Engineer, Zone - XI, Greater Chennai Corporation, to take action in regard to the clearances of encroachments in issue. Based on the Representation from the First Respondent Department, the first Ombudsman, Tamil Nadu Urban Local Bodies, Saidapet, Chennai, had ordered the Assistant Executive Engineer, Zone - XI, Greater Chennai Corporation, to explain the reason for delay in taking appropriate action on the objections of the petitioner and instructed him to attend his Office on 21.11.2017 for an Enquiry in regard to the delay in clearing the encroachment in respect of the property comprised in S.No.239/2. After a detailed Enquiry, that took place on 21.11.2017, at the Ombudsman Office with the Assistant Engineer (H) C & M, Poonamallee and Assistant Executive Engineer, Zone - XI, Greater Chennai Corporation, the first Ombudsman passed an Order that the Greater Chennai Corporation along with Highways Department should jointly clear the encroachment immediately from S.No.239/2 along with Bharathi Salai. Based on the Order of the Tamil Nadu Local Body, dated 21.11.2017, a Final Notice for eviction was served to all the Encroachers on 12.12.2017, (which includes the petitioner herein) for whom, Show Cause

Notice, dated 24.09.2016 was already issued.

9. Apart from perusal of the documents, the Respondents orally enquired with the said parties/Encroachers at the site in Bharathi Salai and facts gathered clearly show that the Petitioner has no valid claim or right over the property, in question, and that, it belongs to the Government. Therefore, Notice issued to the Petitioner is maintainable both on facts and Law. Also that, no Patta is granted to the Petitioner and the mere pendency of the Application for Patta before the concerned Authority, per se, will not confer any right/title on her. Similarly, no reliance can be placed, curtailing the Government from taking necessary steps to remove the encroachments.

10. Considering the fact that the Petitioner has no right over the property in S.No.239/2 and on perusal of her objections, dated 25.10.2016,, wherein, she had categorically mentioned that, she is occupying Eri Poramboke, viz., the property in S.No.239/2 and that, she had paid necessary House Tax, Electricity Charges, etc., this Court is of the considered view that, in respect of a Government Poramboke Land, and especially, encroachments being on the Eri Poramboke Land, in S.No.239/2, then, the Petitioner cannot claim any right over the same, and in this regard, he also cannot place reliance or fall back upon the sale effected to and in her favour.

11. It is to be noted that the payment of Electricity charges, water charges, property tax by no stretch of imagination, will confer any right/title to and in favour of the petitioner, who reside or occupy or made an encroachment in the property, which does not belong to her, and that too, when she is an encroacher in the 'Eri Poramboke Land' or Government Poramboke Land and fittingly, she can be termed as an 'Encroacher' in law.

12. Thus, only after satisfying all the requirements of Law, and after issuance of Show Cause Notice to the Petitioner by the First Respondent, the Authorities had taken necessary action for eviction, and when it comes to light that the Petitioner has no manner of right, whatsoever, in the Government 'Eri Poramboke Land', then, there is no basis for her to challenge the Eviction Notice, and it is always open to the Authorities concerned to remove the encroachment made by the Petitioner in S.No.293/2.

13. Viewed in that perspective, this Court unhesitatingly holds that the impugned Order, dated 12.12.2017, passed by the First Respondent is free from any illegalities or infirmities.

14. In fine, the Writ Petition is dismissed, leaving the parties to bear their own costs. It is open to the Officials of the Respondent/High Ways Department to take necessary steps to remove the encroachment in Eri Poramboke Land, in S.No.239/2, where, the petitioner resides and such exercise shall be done within a period of two weeks from the date of receipt of a copy of this order. It is made quite clear that, liberty is granted to the Authorities to seek assistance of the Police for removal of the encroachment or eviction of the petitioner, only if situation so warrants/if need be. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

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To

1. The Assistant Divisional Engineer,
The Tamil Nadu Highways Department,
Ambattur Sub Division,
Avadi, Chennai - 600 054.
2. The Divisional Engineer,
Thiruvalur (H) C & M Division,
The Tamil Nadu Highways Department,
Thiruvallur.

+1 CC to Mr.M. Vijayakumar, Advocate sr 16423.

+1 CC to Govt. Pleader sr 16705.

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W.P.No.34226 of 2017

GJ(CO)
SP(27/03/2018)