

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.03.2018

CORAM

THE HON'BLE Mr.JUSTICE M.VENUGOPAL
AND
THE HON'BLE Mr.JUSTICE S.VAIDYANATHAN

W.P.No.4153 of 2018
and W.M.P.No.5098 of 2018

R.Sarasu

... Petitioner

Vs

1. The District Collector,
Thiruppur District, Thiruppur.
2. The District Adhi-Dravidar Welfare Officer,
Thiruppur Distirct, Thiruppur.
3. The Tahsildar,
Thiruppur Taluk,
Thiruppur District.

... Respondents

Writ Petition filed under Article 226 of The Constitution of India, praying for issuance of Writ of Mandamus to direct the 1st respondent to forbear the 3rd respondent from demolishing the portion of the petitioner's house constructed on the Government land along with the land bearing Assignment Patta No.H&D 349/1410 issued in favour of the petitioner by the 3rd respondent and further direct the 1st respondent to take necessary action to issue the patta to the portion of the land along with the land bearing Assignment Patta No.H&D 349/1410 situated at Sevanthampalayam [Muthanampalayam] Thiruppur Taluk, Thiruppur District under the petitioner's possession and enjoyment, based on the petitioner's representation dated 14.02.2018 made to the 1st respondent.

For Petitioner : Mr.K.Kannan

For Respondents : Mr.R.Udhayakumar, AGP

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 Additional Government Pleader appearing for the Respondents.

2.According to the Petitioner, her community people are

homeless in the society and considering her status of homelessness in the society, the Third Respondent/Tahsildar of Thiruppur Taluk had assigned the Patta bearing No.H&D 349/1410 to the land measuring an extent of 2.25 Cents on 12.12.2000. In the Patta land that was given to her, she had put up one house covered by tiles and the same was possessed and enjoyed by her, even before the Patta was issued in her favour. She had been in continuous possession and enjoyment of the said land by putting up a house till now. She had extended her roof, which is touching the land to an extent of 2.75 Cents and the said house is being put up and enjoyed by her for the past 30 years without any interruption from anybody. She is paying house tax to the house measuring an extent of 5.25 Cents and as on date, no one including the Revenue Authority, the Respondents herein have raised any objection and most of the people in the said area according to her, have put up house by extending the roof which is touching the Government land. Moreover, all the people in the said area are paying the House Tax to the lands which is in the Government Poramboke.

3.The version of the Petitioner is that she has been issued with an Aadhar Card to the house measuring an extent of 5.2 Cents and the house is at Seventhampalayam [Muthanampalayam], Thiruppur. In the meanwhile, the Third Respondent without issuing any notice as contemplated under the Act, had directed her to appear before him and she was compelled to give in writing to the effect that if she would not demolish the roof which touching the Government land on or before 24.02.2018, the Third Respondent will initiate necessary action to demolish the construction in the Government land. In fact, she refused to give it in writing and taking undue advantage of her illiteracy, the Third Respondent had obtained her signature in the blank paper and the matters were written by the office of the Third Respondent and subsequently, she was shocked and surprised on knowing the said fact.

4.The Petitioner made a representation on 14.02.2018 to the Respondents 1 and 2 to hear her grievance and she has an apprehension that her house will be demolished at any point of time by the Third Respondent/Tahsildar, Thiruppur District, without following the due process of Law and the First Respondent is the authority to take necessary action on the Third Respondent in taking action for demolition of her house in the land bearing Patta No.H&D 349/1410 issued by the Third Respondent. The First Respondent has failed to take necessary action based on her representation and ultimately, she is affected very much. The grievance of the Petitioner is that as on date, her request for issuance of patta to the rest of the land has not been looked into by the First Respondent herein. Hence, she has filed the present Writ Petition.

5.No counter is filed on behalf of the Respondents.

6.Per contra, it is the submission of the Learned Additional Government Pleader appearing for the Respondents that the petitioner is assigned with Patta in her favour dated 12.12.2000, in respect of survey No.625/5 Part, measuring an extent of 2.25 Cents and beyond that, she is entitled to claim any land from the concerned authority.

7.In her representation dated 14.02.2018, addressed to the First Respondent/ District Collector, she had categorically admitted inter alia that for the extended area of 2.75 Cents [further area] put up by her and had requested for issuance of Patta. From this, it is crystal and clear that apart from the land which was assigned to her measuring an extent of 2.25 Cents in Survey No.625/5 as stated supra, she had committed an act of encroachment and for the extended portion, she had prayed for issuance of Patta by the Revenue Authority which cannot be countenanced in the eye of Law.

8.It is made quite clear on the side of the Respondents before this Court that the Respondents are only taking necessary action against the petitioner for removal of encroachment portion, viz., the extended area, measuring an extent of 2.75 Cents in Survey No.625/5. As such, she is not entitled to get relief as prayed for by her in the representation dated 14.02.2018.

9.It is to be borne in mind that an encroacher in respect of a Government land, is not entitled to squat on the property and the Petitioner being a violator, cannot shed farcical/crocodile tears and take a plea of mercy that there has been negation of 'Principles of Natural Justice', i.e. she should have been provided with a 'prior opportunity of Hearing' to consider her grievance or representation, as the case may be.

10.It cannot be lost sight of that payment of Electricity Charges, Water Tax, Revenue Tax, possession of Ration Card or Aadhar Card will not enure to the benefit of Petitioner, in regard to the claiming of ownership of the property, when admittedly the extended land belongs to the Government poramboke, for which she has no title, right or interest of any kind.

11.Be that as it may, in view of the fact that the Petitioner is an encroacher in regard to the extended portion of 2.75 Cents in Survey No.625/5, this Court is of the earnest opinion that the Third Respondent is the competent Authority to remove the encroachment in question. Therefore, this Court

deems it fit and proper, based on the facts and circumstances of the case which float on the surface, directs the Petitioner to remove the encroachment made by the petitioner in Survey No.625/5 within fifteen days from the date of receipt of a copy of this order.

12.In case, if the Third Respondent finds that the Petitioner has not removed the encroachment in question on her volition within the time adumbrated by this Court, then the Third Respondent shall take an effective and efficacious steps in regard to the removal of encroachment made by her, [of course, even after seeking the assistance of Police, if situation warrants or need be] within a period of ten days thereafter.

With the aforesaid observations and directions, the Writ Petition stands disposed of. No costs. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector,
Thiruppur District,
Thiruppur.
2. The District Adhi-Dravidar Welfare Officer,
Thiruppur Distirct, सत्यमेव जयते
Thiruppur.
3. The Tahsildar,
Thiruppur Taluk,
Thiruppur District.

+1cc to Government Pleader, in sr.no.17434

W.P.No.4153 of 2018
and

W.M.P.No.5098 of 2018

PVS (CO)
CS/19/03/18