

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.04.2018

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

WP.No.9682/2018 & WMP.Nos.11586 & 11587/2018

Mrs.Jayalakshmi

.. Petitioner

Versus

The Special Officer/Block Development
Officer, [Village Panchayat],
Kandamangalam Panchayat Union
Villupuram District.

... Respondent

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records in connection with the eviction notice of the respondent dated 05.04.2018 issued under section 6 of the Tamil Nadu Land Encroachment Act, 1905, No.3/1905, against the petitioner in respect of 0.03.0 ares of land in Survey No.60/1, of Azhiyur Village and quash the same.

For Petitioner : Mr.R.Srinivas

For Respondent : Mr.R.Udhayakumar, AGP

ORDER

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

By consent, the writ petition is taken up for final disposal. Mr.R.Udhayakumar, learned Additional Government Pleader accepts notice on behalf of the respondent.

2 The petitioner claims to be in possession of 0.03.0 ares of land in S.No.60/1 in Azhiyur Village, Villupuram Taluk and District and according to her, the forefathers of her husband were in possession and enjoyment of the said land and by way of succession, her husband came to be in possession of the property and after his demise, the petitioner continues to be in possession and enjoyment of the same. It is also the case of the petitioner that the lands belonged to her in patta No.59 in

S.No.60/2 along with superstructure have been acquired for the purpose of road expansion and undertaken by the National Highways Authority of India and she had also received compensation and the petitioner is in possession of a meager extent of 3 ½ cents of land in "Kulam Poramboke".

3 The learned counsel for the petitioner would submit that the possession of the petitioner on the land in question is an unobjectionable one and on an earlier occasion, the respondent had issued notice u/s.6 of the Tamil Nadu Land Encroachment Act, 1905 dated 12.01.2018 and challenging the same, she filed WP.No.1933/2018 and the said notice was quashed with a further direction, directing the respondent to take into consideration the earlier written objections submitted by the petitioner and pass orders in accordance with law and despite such a positive direction, once again the respondent has issued the impugned notice dated 05.04.2018 without assigning any reasons and making a challenge to the said order, the petitioner is before this Court by filing the present writ petition.

4 It is the further submission of the learned counsel for the petitioner that in the absence of any authorisation as contemplated u/s.6 and 7 of the said Act, the respondent is not competent to issue such a notice and on that sole ground also, the impugned notice warrants interference.

5 Per contra, Mr.R.Udhayakumar, learned Additional Government Pleader appearing for the respondent would submit that even as per the own admission of the petitioner in her representation / written objection dated 09.01.2018, she is in occupation of the portion of the land classified as "Kulam Poramboke" and in terms of G.O.Ms.No.540, Revenue [LD-6[2]] Department dated 04.12.2014, she is liable to be evicted and accordingly, the impugned order came to be issued.

6 This Court has considered the rival submissions and perused the materials placed before it.

7 Though the petitioner has prayed for a larger relief, this Court, taking into consideration, the above facts and circumstances and without going into the merits of the claim projected by her, is of the view that the petitioner is having an effective alternate remedy u/s.10 of the Tamil Nadu Land Encroachment Act, 1905, with a provision for stay u/s.10-B of the said Act.

8 In the light of the availability of the effective alternate remedy, the petitioner is at liberty to file an Appeal along with a petition for stay, challenging the legality of the impugned notice dated 05.04.2018, under section 10 of the said

Act, to the Appellate Authority, viz., the District Collector, Villupuram District, within a period of four weeks from the date of receipt of a copy of this order, by enclosing a copy of the order passed in this writ petition along with relevant and authenticated documents and the Appellate Authority or the Delegated official shall entertain the said appeal, if the papers are otherwise in order and take up the petition for stay initially and give a disposal in accordance with law within a period of four weeks from the date of entertainment of the appeal and till such time, the respondent shall defer further decision in terms of the impugned notice dated 05.04.2018. The Appellate Authority or the delegated official is also at liberty to take up the main appeal itself and give a disposal on merits and in accordance with law within period of twelve weeks from the date of entertainment of the said appeal.

9 It is also relevant to extract paragraphs No.8 and 9 of the order dated 01.02.2018 made in WP.No.1933/2018 [Jayalakshmi Vs. The Special Officer / Block Development Officer, [Village Panchayat], Kandamangalam Panchayat Union, Villupuram District]:-

"..

8 It is to be pointed out that when an aggrieved party of a litigant submits a representation / written objections before the competent authority, requiring that party to do a specific act within a specified period and when the respondent has not considered or dealt with any of the objections / points raised by the petitioner / concerned complainant in the final orders passed by him, then, in law, the same is liable to be set aside, based on the principle that the authority concerned had not applied his thinking judicial mind. Even though, the Respondent is an administrative authority, still the 'Principles of Natural Justice' requires the authority, namely, the Respondent to consider the objections of the Petitioner and to deal with the representation / points or objections of the Petitioner in a fair, just, free, objective and dispassionate manner. However, in the present case, the Respondent has not adverted to any of the points raised by the Petitioner in a representation dated 09.01.2018, which had resulted in serious miscarriage of justice with the passing of an Impugned Order of Eviction Notice issued under Section 6 of the Act. In this Connection, this Court very pertinently points out that as per Section 7 of the Tamilnadu Land Encroachment

Act, 1905 [Act III of 1905] prior notice to a person in occupation is to be given by the authorised officer or any other officer, specified by the State Government in this behalf.

9. In the instant case, in the notice dated 21.12.2017 issued under Section 7 of the Tamilnadu Land Encroachment Act to the Petitioner, she had submitted her objections / return objections / representation on 09.01.2018 addressed to the Block Development Officer (Village Panchayat), Kandamangalam Panchayat Union, Kandamangalam that was not considered or taken into account by the Respondent at the time of passing the impugned order, as such, this Court, left with no other option except to interfere with the Impugned Order of Eviction Notice dated 12.01.2018 passed by the Respondent and sets aside the same, consequently, the Writ Petition succeeds."

10 This Court, in cases of similar nature, had repeatedly passed orders by directing the Chief Secretary to Government of Tamil Nadu, to look into the provisions of the Tamil Nadu Land Encroachment Act, 1905, [Tamil Nadu Act 3 of 1905] and also indicated that it is the high time to revisit the entire Legislation for the reason that it is a legacy of the Colonial Past. It is the high time, a comprehensive Legislation is to be framed, to deal with all kinds of encroachments. This Court, hope and trust that the Chief Secretary to Government, may take a call immediately, by taking into consideration of the fact that this Court, day-in and day-out, is faced out with very many litigations dealing with either for removal of encroachment or removal of encroachment being done without recourse to due process of law.

11 The writ petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar (CS V)

//True copy//

Sub Assistant Registrar

AP

To

The Special Officer/Block Development
Officer, [Village Panchayat],
Kandamangalam Panchayat Union
Villupuram District.

COPY TO:-

- 1 The Chief Secretary to Government,
Government of Tamil Nadu,
Secretariat, Fort St. George,
Chennai 600 009.
- 2 The Secretary to Government
Government of Tamil Nadu
Revenue Department,
Secretariat, Fort St. George,
Chennai 600 009.
- 3 The Secretary to Government
Government of Tamil Nadu
Municipal Administration & Water Supply Department,
Secretariat, Fort St. George,
Chennai 600 009.
- 4 The Secretary to Government
Government of Tamil Nadu
Public Works Department,
Secretariat, Fort St. George,
Chennai 600 009.
- 5 The Secretary to Government
Government of Tamil Nadu
Highways Department,
Secretariat, Fort St. George,
Chennai 600 009.
- 6 The District Collector
Villupuram District.

+2cc to Mr.R.Srinivas, Advocate SR.No.29099 & 30503

WP.No.9682/2018

MG(CO)
GN(25/04/2018)