

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2018

CORAM:

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

W.P.No.3903 of 2018

J.Umadevi

.. Petitioner

Vs.

1. The Secretary to Government,
Revenue Department,
Fort St.George, Chennai-9.
2. The District Collector,
Dharmapuri District, Dharmapuri.
3. The Tahsildar,
Harur Taluk, Harur,
Dharmapuri District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the first respondent herein to consider and pass order on the Revision Petition dated 08.06.2017 filed under Section 10-A(c) of the Tamil Nadu Land Encroachment Act, 1905 by the petitioner as against the order of the second respondent passed in his proceedings Na.Ka.No.20241/2014/D3, dated 24.09.2016 on merits and in accordance with law within a reasonable time that may be framed by this Court.

For Petitioner : Mr.R.Thamaraiselvan

For Respondents : Mr.R.Venkatesh, Govt. Advocate

ORDER

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

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Mandamus to direct the first respondent herein to consider and pass order on the Revision Petition dated 08.06.2017 filed under Section 10-A(c) of the Tamil Nadu Land Encroachment Act, 1905, by the petitioner, as against the order

of the second respondent passed in his proceedings Na.Ka.No.20241/2014/D3, dated 24.09.2016 on merits and in accordance with law, within a reasonable time that may be framed by this Court.

2. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents. By consent of the learned counsel appearing for the parties, the Writ Petition itself is taken up for disposal.

3. According to the petitioner, she purchased a land with thatched house built on the land in Survey No.9/14 (Old Survey No.9/1) in Rasalampatti Village, Harur Taluk, Dharmapuri District, measuring an extent of 0.17.0 hectares from one Sarfoom, wife of Ameer John and her son and daughters, through sale deed dated 20.01.2000 with electricity service connection bearing S.C.No.123. As a matter of fact, the said land is a patta land and the patta was granted to her vendor Sarfoom by the third respondent/Tahsildar, Harur, vide Patta No.HSD 117/99, dated 19.01.1990. Ever-since the date of purchase, she is in possession and enjoyment of the land with house. In the said land, she has also constructed two-storey building (commercial complex) containing four shops, after demolishing the thatched house. She is paying property tax to the Village Panchayat and also paying the charges for electricity consumption to the concerned authority of the TANGEDCO. In spite of repeated representations made by the petitioner to the third respondent, the patta was not transferred in her favour from her vendor's name.

4. It comes to be known that the petitioner filed W.P.No.11210 of 2006 before this Court seeking for a direction to the respondents therein to consider her representation, dated 07.11.2005 with regard to the transfer of patta. This Court, on 21.04.2006, issued direction to the respondents therein to dispose of the said representation. However, no order was passed thereon and she continued to be in possession, paying necessary tax to the Government/local body without any hindrance whatsoever. While that being so, the Block Development Officer, Morappur, issued notice dated 24.06.2014 under Section 6 of the Tamil Nadu Land Encroachment Act, 1905, to the petitioner to vacate the land and hand over the possession of the same, based on the allegation that she had encroached the land in question and the same is required for the purpose of expanding the Bus Stand, and it was followed by another notice, dated 08.07.2014.

5. It transpires that the petitioner filed another Writ Petition in W.P.No.19261 of 2014 before this Court to quash the said notice dated 08.07.2014, as the authority concerned had no jurisdiction. However, on 26.08.2014, a Division Bench of this

Court disposed of the said Writ Petition by observing that the said notice, dated 08.07.2014 of the Block Development Officer, stood abated, as he has no jurisdiction and granted liberty to the Tahsildar to proceed in accordance with law. Thereafter, the third respondent/Tahsildar issued a fresh notice, dated 05.09.2015 as per Section 6 of the Tamil Nadu Land Encroachment Act, calling upon the petitioner and her father-in-law A.Gopal as to why they should not be evicted from the landed property in question, as if they have encroached the land in S.No.9/1, sub-division S.No.9/15 of an extent of 0.17.0 hectares. The petitioner and her father-in-law furnished replies, dated 10.09.2015 and 11.09.2015 in detail, stating that the land was purchased by the petitioner and she is in occupation in S.No.9/1, sub-division No.9/14, but not S.Nos.9/1 and 9/15 mentioned in the said notice, dated 05.09.2015 issued by the third respondent. As such, they are not legally bound by the said notice, dated 05.09.2015, since they are not encroachers.

6. Added further, the third respondent, by order dated 15.10.2015, rejected the petitioner's contention and decided to proceed with the eviction process. They have filed a detailed appeal, dated 20.10.2015, before the second respondent, against the said order dated 15.10.2015, and pointed out that the Survey Number has been wrongly mentioned by the Tahsildar as S.No.9/15 instead of the correct Survey Number in S.No.9/14, but though the Survey Number differed, the boundaries are the same and hence, the boundaries alone would prevail over the Survey Number.

7. On 27.12.2015, the third respondent straightaway came to the petitioner's land and abruptly demolished the building owned by the petitioner with the help of local Revenue and Police Officials and forcibly evicted the petitioner without following any of the procedures contemplated under the Tamil Nadu Land Encroachment Act, especially when the appeal is pending before the second respondent/District Collector, and no orders are passed thereon as per Section 6 of the said Act. Aggrieved by the same, the petitioner sent a representation, dated 28.12.2015 to the respondents 2 and 3, pointing out their illegal action and requested them to restore the possession of the land and also sought compensation for the demolished building, but there was no response. Hence, the petitioner filed another Writ Petition in W.P.No.20066 of 2016 before this Court seeking for issuance of a Writ of Mandamus to direct the respondents 2 and 3 to restore the possession of the land in S.No.9/14 mentioned as S.No.9/15 in the notice, dated 05.09.2015 issued by the third respondent under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 and to award suitable compensation for the loss caused due to illegal demolition of building in question by the third respondent. On 01.07.2016, a Division Bench of this Court

disposed of the said Writ Petition with a direction to the second respondent to conduct enquiry and pass orders on the appeal filed by the petitioner, within one month from the date of receipt of a copy of the order, and till some finding is recorded by the District Collector, the status-quo shall be maintained.

8. Subsequently, the second respondent conducted enquiry and the petitioner appeared and deposed before him and produced all documents in support in support of her case. However, according to the petitioner, the second respondent had passed the order mechanically on 24.09.2016, rejecting her claim.

9. Learned counsel for the petitioner contended that the order dated 24.09.2016 passed by the second respondent is without proper application of mind, and hence, the same deserves to be quashed. Thereafter, the petitioner preferred appeal under Section 10(c) of the Tamil Nadu Land Encroachment Act, 1905, on 01.11.2010, but the same was rejected on 17.03.2017 by the first respondent, stating that the second appeal is not maintainable. In this regard, learned counsel for the petitioner submits that a Revision would lie under Section 10-A(c) of the said Act before the first respondent as against the order of the second respondent-District Collector. Therefore, once again the petitioner filed Revision Petition on 08.06.2017 under Section 10-A(c) of the said Act, together with necessary application to condone the delay in filing the Revision before the first respondent against the order dated 24.09.2016 passed by the second respondent. It is the grievance of the petitioner that till date, no order has been passed on the aforesaid condone delay application and Revision Petition and no notice of enquiry or summons were issued to her in the subject matter in issue. Hence, the petitioner has preferred the present Writ Petition for the relief stated supra.

10. It is to be pertinently pointed out by this Court that the third respondent-Tahsildar, in proceedings in Na.Ka.No.6428/015/A1, dated 15.10.2015, addressed to the petitioner, had clearly in the reference column, mentioned the order passed by this Court in W.P.No.19261 of 2014, dated 26.08.2014 and had clearly stated that S.No.9/15 in Rasalampatti Village Accounts, the subject land, namely S.No.9/15 is mentioned as "Chatthiram" poramboke and since this place was selected for putting up a Bus Stand and also that this Court has ordered for removal of the encroachment in the said place, and based on the same, action is being taken to remove the encroachment in question.

11. Admittedly, the petitioner has preferred the application to condone the delay in filing a Revision Petition as per

Section 10-A(c) of the Act and also projected a Revision Petition on 08.06.2017 and the same are pending as on date on the file of the first respondent-Secretary to Government, Revenue Department, Chennai.

12. Hence, without going into the merits of the subject matter in issue and also not traversing on the merits of the condone delay application as well as the Revision Petition filed before the first respondent, this Court, simpliciter, directs the first respondent to look into the condone delay application filed by the petitioner along with the Revision Petition and if there are any substance in the said matters, after providing necessary opportunity of hearing to the petitioner, complainant if any and others, if any, and also after adhering to the principles of natural justice, the first respondent is directed to dispose of the condone delay application together with the Revision Petition, in accordance with law, within a period of four weeks from the date of receipt of a copy of this order. It is open for the petitioner to raise all factual and legal pleas before the first respondent, who shall take note of the same and also deal with those aspects while passing final orders in the Revision Petition. The first respondent is further directed to look into the aspect of maintainability of the condone delay application together with the Revision Petition filed by the petitioner, strictly in accordance with law and pass orders within the time adumbrated above by this Court. It is made clear that if the Revision Petition with the condone delay application and Revision Petition purportedly filed by the petitioner before this Court, are not disposed of by the first respondent within the time stipulated supra, then the Assistant Engineer, TNEB/TANGEDCO, Harur Taluk, Dharmapuri District, shall disconnect the electricity supply of the premises in question.

13. With the above observations and directions, the Writ Petition is disposed of. No costs.

Sd/-

सत्यमेव जयते
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

CS

To

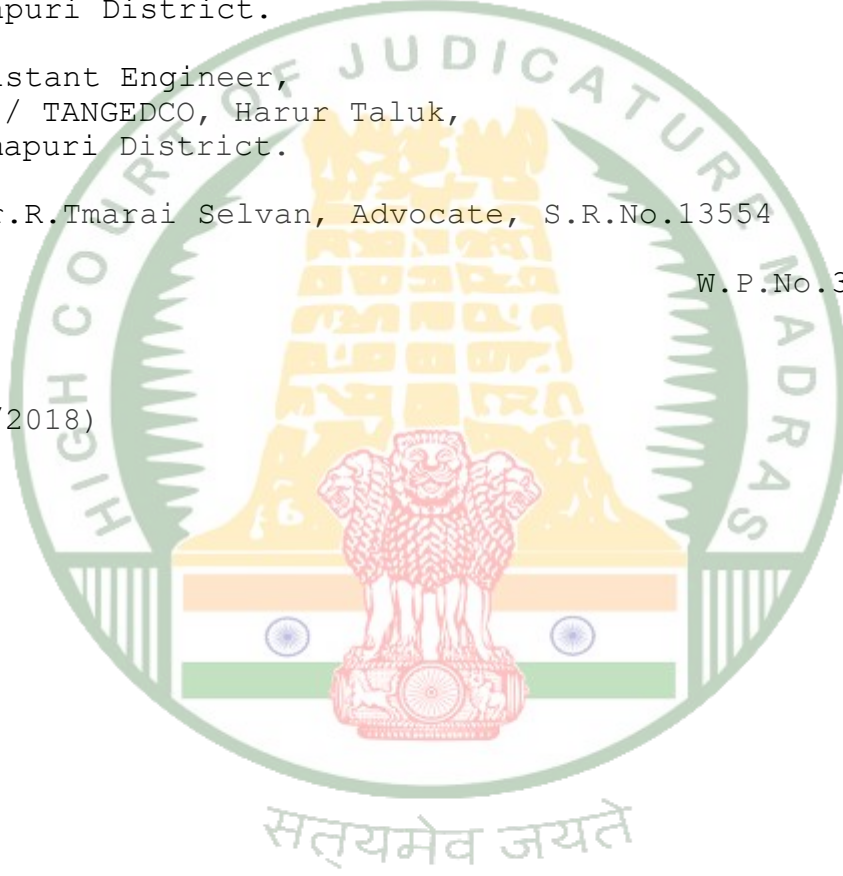
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3. The Tahsildar,
Harur Taluk, Harur,
Dharmapuri District.
- 4.The Assistant Engineer,
TNEB / TANGEDCO, Harur Taluk,
Dharmapuri District.

+1cc to Mr.R.Tmarai Selvan, Advocate, S.R.No.13554

W.P.No.3903 of 2018

MP (CO)

RRK (21/03/2018)



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