

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2018

CORAM:

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

W.P.No.1115 of 2018
and
W.M.P.No.1384 of 2018

R.Rajeshwari

.. Petitioner

Vs.

1. The District Collector, Kancheepuram.
2. The Commissioner,
Kundrathur Town Panchayat, Kundrathur.
3. The Tahsildar,
Alandur Taluk, Alandur,
Kancheepuram District.
4. The President,
Town Panchayat,
Moulivakkam, Chennai.
5. Ganagarajan

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records relating to the impugned order of the second respondent in Na.Ka.No.1357/2017-A3, dated 28.11.2017 and quash the same as the same is arbitrary, illegal and non-est in the eye of law.

For petitioner : Mr.P.Selvaraj

For respondents: Ms.M.Lalitha, Govt. Advocate for RR-1 to 4

ORDER

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

The petitioner has come forward with this Writ Petition praying for issuance of a Writ of Certiorari to call for the records relating to the impugned order of the second respondent

in Na.Ka.No.1357/2017-A3, dated 28.11.2017 and quash the same as the same is arbitrary, illegal and non-est in the eye of law.

2. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents 1 to 4. Since this Court is disposing of the present Writ Petition after hearing the petitioner's side as well as the respondents 1 to 4's side, this Court is of the view that it is not necessary to hear the fifth respondent.

3. According to the petitioner, she being a widow and senior citizen, has three daughters, namely Ponni, Vijayalakshmi and Mahalakshmi, aged about 30, 28 and 20 respectively. Her first daughter is physically handicapped to an extent of 75% disability. The petitioner is a flower vendor and earning Rs.50 to 80 per day, out of which, she is eking out her livelihood, that too with a physically handicapped daughter. The petitioner and her daughters are residing in the property in question for the past 30 years.

4. It is the version of the petitioner that they are residing in a thatched hut to an extent of 180 Sq.Ft. of the land, without disturbance of anyone including the respondents. On both sides of the petitioner's thatched shed, some third parties are residing with two-storey building without leaving any car or two-wheeler parking. As such, the adjacent neighbours, particularly the fifth respondent herein, has an intention to park the vehicle in the land where the petitioner is residing with her family. In fact, the fifth respondent is a man of means and he managed the politician, police and lower level Government officials, to evict the petitioner from the spot by saying one reason or the other. Hence, the petitioner applied to the Government of Tamil Nadu for issuance of patta in the year 2010 and she has also applied to Kalaingar Free House Scheme to issue patta, and the same are pending before the Government of Tami Nadu.

5. When that being the fact situation, the fifth respondent disturbed the petitioner as much as he could do, to park his car and two-wheeler and ultimately, with his money and muscle power and with the help of the Town Panchayat officials, started to evict the petitioner and has also filed a Writ Petition in W.P.No.6071 of 2017 before this Court, as if the petitioner herein is an encroacher of water channel/water canal. In this connection, learned counsel for the petitioner submits that the claim of water channel/water canal is an utter false and the second respondent-Commissioner of Kundrathur Town Panchayat is only dancing to the tune of the fifth respondent and thereby

threatened her and her daughters. Also that the claim of the present writ petitioner is that the said Writ Petition filed by the fifth respondent herein, was negatived by a Division Bench of this Court while disposing of the same on 15.03.2017. But this Court to a limited extent in the said Writ Petition, only directed for consideration of the representation of the fifth respondent, as the same should not remain unattended to. Therefore, the second respondent herein (Kundrathur Town Panchayat), in hand-in-glove with the fifth respondent herein, has issued the impugned eviction notice, dated 28.11.2017, stating that the petitioner should be evicted within 7 days, failing which, criminal case would be foisted against her. Hence, the petitioner has preferred this Writ Petition for the relief stated supra.

6. Per contra, it is the submission of the learned Government Advocate appearing for the respondents 1 to 4 that the present writ petitioner has encroached upon the water channel poramboke by putting up thatched hut over the concrete road portion put up by the Town Panchayat and in fact, the channel vested with the Town Panchayat and the Panchayat has put up the concrete structure over the channel and the encroachment of the petitioner is obstructing the free flow of rain water, etc. Therefore, it is vehemently contended on behalf of the respondents 1 to 4 that the petitioner has no right whatsoever or authority to encroach upon the water channel and put up the thatched hut. In short, the laying of thatched hut is an unauthorised one and she is unnecessarily accusing and blaming the officers and servants of the Panchayat as well as the other Government officials and also private persons.

7. Insofar as W.P.No.6071 of 2017 filed by the fifth respondent herein is concerned, on 15.03.2017, a Division Bench of this Court directed the third respondent-Tahsildar, Alandur Taluk, therein, to consider the representation of the petitioner therein (fifth respondent herein), dated 13.10.2016 complaining about the encroachment put up on the road and the canal by the petitioner herein who is the fifth respondent therein. Thereafter, the fifth respondent herein filed Contempt Petition in Cont.P.No.2062 of 2017 against the second and third respondents therein for not complying with the order of this Court, dated 15.03.2017.

8. The fourth respondent-President of Town Panchayat, Moulivakkam, Chennai, has filed an affidavit dated 31.01.2018, stating that there are encroachments along the channel/canal and that they have initiated action against the petitioner herein and without initiating action on the encroachers, it would

amount to discrimination. Based on the orders/direction issued by the Division Bench of this Court in W.P.No.6071 of 2017, action has been initiated against the petitioner herein by means of issuance of the impugned notice, dated 28.11.2017 and since the petitioner is an encroacher, the authorities/officials of the Town Panchayat, in terms of Section 131 of the Tamil Nadu Panchayats Act, are entitled to initiate action against the petitioner. It is also represented on behalf of the respondents 1 to 4 that the Panchayat will initiate action against all the encroachers over the channel. Moreover, as long as no patta is issued by any competent authority, to and in favour of the petitioner, it is submitted on behalf of the respondents 1 to 4 that the Panchayat is entitled to initiate action and remove the encroachment. In short, it is projected on the side of the respondents 1 to 4 that the petitioner cannot lay any claim or title to the property, much less the property of the Panchayat, as she is an encroacher. Therefore, according to the respondents 1 to 4, the petitioner is liable to be evicted based on the impugned notice.

9. Admittedly, the petitioner is an encroacher over the water channel and in fact, it is not disputed by the learned counsel for the petitioner that she had put up structure in the channel/canal, which is meant for free flow of rain water, etc., without any authority or semblance of any right to and in favour of the petitioner, as she had encroached by putting up a thatched hut and has filed the present Writ Petition based on the issuance of the impugned notice, dated 28.11.2017.

10. At this juncture, this Court aptly points out a decision of the Supreme Court reported in 1997 (11) SCC 123 (Ahmedabad Municipal Corporation Vs. Nawab Khan Gulab Khan), wherein and whereunder, it is observed by the Apex Court as follows:

"The removal of encroachment needs urgent action. But in this behalf what requires to be done by the competent authority is to ensure constant vigil on encroachment of the public places. Sooner the encroachment is removed when sighted, better would be the facilities or convenience for passing or re-passing of the pedestrians on the pavements or footpaths facilitating free flow of regulated traffic on the road or use of public places. On the contrary, the longer the delay, the greater will be the danger of permitting the encroachers claiming semblance of right to obstruct removal of the encroachment."

The above decision of the Supreme Court has also been followed by a Division Bench of this Court in W.P.No.29985 of 2016, dated 29.09.2016.

11. In view of the fact that on behalf of the respondents 1 to 4, especially on behalf of the second respondent/Kundrathur Town Panchayat, it is represented before this Court that the Panchayat is taking action against all the encroachers over the water channel, including the petitioner and that they will also initiate action against the encroachers whoever occupies the place over the water channel and this Court, taking into account yet another fact that no patta as on date was issued to and in favour of the petitioner, this Court does not find any legal infirmity in regard to the issuance of the impugned notice by the second respondent. As such, the impugned notice is free from any flaw. Consequently, this Writ Petition fails.

12. In fine, the Writ Petition is dismissed, leaving the parties to bear their own costs. Consequently, W.M.P. is closed. The petitioner is granted four weeks' time from the date of receipt of a copy of this order, to get herself voluntarily vacated from the property in question, thereby removing the thatched hut put up by her in the encroached portion. It is abundantly made clear that if the petitioner does not remove the encroachment/thatched hut put up by her in the subject land, it is open for the authorities concerned or the respondents 1 to 4 to take necessary action thereafter in the manner known to law and in accordance with law. If any Police assistance is required for eviction of the petitioner, then it is open for the authorities to seek the aid of the concerned Police in that regard to evict/remove the encroachment made by the petitioner.

-Sd/-

Assistant Registrar

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Sub Assistant Registrar

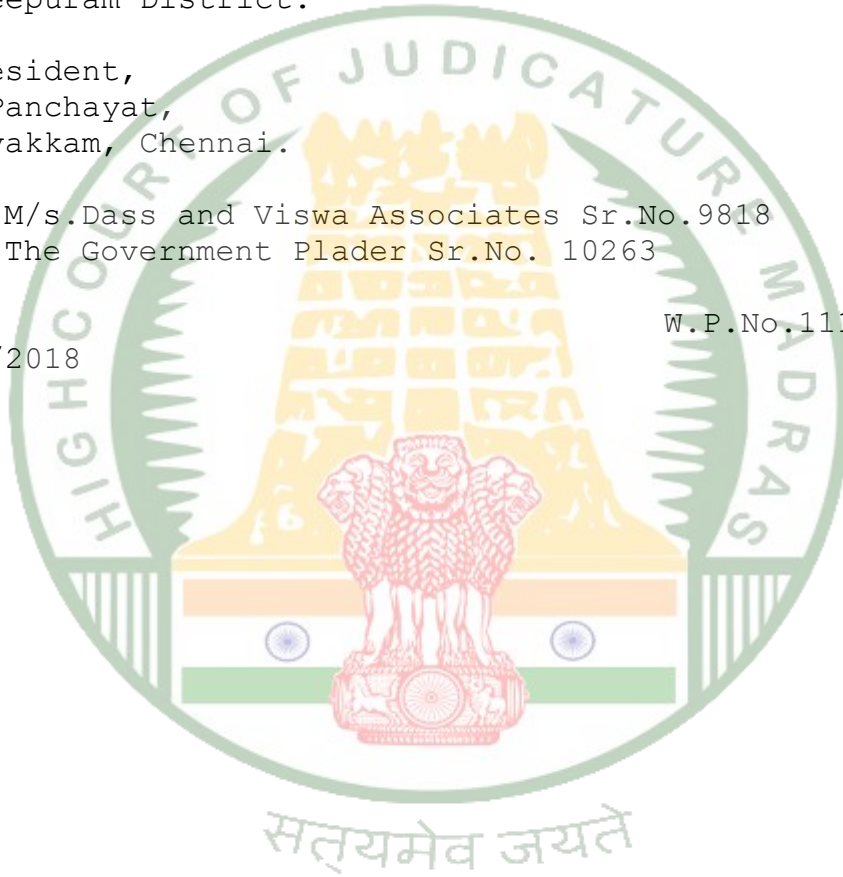
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To

1. The District Collector, Kancheepuram.
 2. The Commissioner,
Kundrathur Town Panchayat, Kundrathur.
 3. The Tahsildar,
Alandur Taluk, Alandur,
Kancheepuram District.
 4. The President,
Town Panchayat,
Moulivakkam, Chennai.
- 1 cc to M/s.Dass and Viswa Associates Sr.No.9818
 - 1 cc to The Government Plader Sr.No. 10263

W.P.No.1115 of 2018

RRI 27/02/2018



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