

IN THE HIGH COURT OF JUDICIATURE AT MADRAS

DATED : 07.06.2018

CORAM

THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos.11773 and 13571 of 2018,
WMP Nos.13742 and 15988 of 2018

Parimala Muthu ... Petitioner in both Petitions

... Vs ...

1. The Commissioner,
Villupuram Municipality,
Villupuram. ...R1 in WP.No.11773/18
...R2 in WP.No.13571/18
2. The District Collector,
Villupuram. ... R1 in WP.No.13571/18
...R2 in WP.No.11773/18

Prayer: W.P.No.11773 of 2018 filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records of the first respondent in his proceedings in Na.Ka.No.1498/2018/F2 dated 26.04.2018 and quash the same.

W.P.No.13571 of 2018 filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records of the first respondent in his proceedings in Na.Ka.No.A5/31990/2017 dated 12.2.2018 and sent to the petitioner on 16.05.2018 and received by the petitioner on 17.05.2018 and quash the same.

For Petitioner : Mr.N.Suresh

For Respondents: Mr.P.Srinivas for R1
in WP.No.11773/18 &
R2 in WP.13571/18

Mr.R.Udhayakumar
Addl.Govt.Pleader for R2
in WP.No.11773/2018 and
R1 in WP.No.13571/18

C O M M O N O R D E R

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

By consent, both writ petitions are taken up together and disposed of by this common order, as the facts leading to the filing of these writ petitions are intertwined.

W.P.No.11773 of 2018

2. The petitioner in the affidavit filed in support of the writ petition would state that she started her career as a Teacher in the year 1971 after completing her graduation and two years later did her Bachelor of Education (B.Ed) and subsequently, completed Post Graduation in Political Science and Masters in Education. It is further averred by the petitioner that her husband was in Indian Air Force and attained the age of superannuation in the year 1984 and both of them had decided to serve the cause of education and therefore, took a decision to start a good English medium school to cater to the needs of the middle class and under privileged sections of the society. The petitioner would further state that she and her husband settled down at Villupuram and started a School in the year 1988 under the name and style of "Claribel Matriculation School" with pre-primary classes and they also formed a Public Charitable Trust in the name and style of "Claribel Education Trust" and it was also registered vide Document bearing No.66 of 1991 on 17.07.1991. Necessary sanction and approval had been obtained to run the said school and the petitioner became the Principal as well as the Managing Trustee of the said School.

3. The petitioner would state that she purchased a landed property ad-measuring 2300 sq.ft. vide registered Sale Deed dated 06.03.1995 and yet another landed property ad-measuring an extent of 1320 sq.ft vide registered Sale Deed dated 06.02.1997. The petitioner would further state that the Tahsildar, Villupuram vide proceedings dated 16.05.1997 in Na.Ka.R.T.R.564/96.97 transferred the Patta in respect of the land admeasuring 0.6081 sq.mts in T.S.No.3/1A1 and 0.0244 sq.mts in S.No.3/1A2 in favour of the petitioner and after obtaining necessary sanction and accord, they also put up the superstructure and running the recognised school with classes - LKG to Xth standard. It is also stated by the petitioner that on 18.10.2004, the Revenue authorities had issued a notice under Section 6 of the Tamilnadu Land Encroachment Act, 1905 (Act 3 of 1905) in respect of the property situated in Town Survey No.1 and 8 in Ward B, Block-32 and it was put to challenge in W.P.No.31323 of 2004 and it was entertained and interim order was granted on 28.08.2017 and thereafter, it was dismissed with a liberty granted to the petitioner to approach the appellate authority under Section 10 of Act 3 of 1905 and accordingly, appeal was filed before the Collector of

Villupuram, the Appellate Authority. The petitioner expressed her grievance that there was no proper enquiry as contemplated under the law and the first respondent, all of a sudden has issued the impugned notice stating that she is an encroacher in respect of the property in T.S.No.2 and T.S.No.3 admeasuring 244 sq.mtrs and making a challenge to the said notice, came forward to file this writ petition.

W.P.No.13571 of 2018

4. Pursuant to the liberty granted to the petitioner vide order dated 28.08.2017 made in W.P.No.31323 of 2004, the petitioner filed statutory appeal by invoking Section 10 of Act 3 of 1905 before the Appellate Authority/first respondent, who vide the impugned order dated 12.02.2018 has found that the petitioner has encroached upon Vaaikal poramboke land in S.No.1/1A admeasuring 331 sq.mts, 85 sq.mts of land in S.No.2/1 which is classified as Municipality park and 24 sq.mts in S.No.3/1, which is classified as Municipality Street and therefore, directed the P.W.D.Water resources organisation as well as the Villupuram Municipality to take appropriate action to remove the encroachment and making challenge to the said proceedings of the first respondent dated 12.02.2018, the petitioner came forward to file this writ petition.

5. Mr.N.Suresh, learned counsel appearing for the petitioner in both the writ petitions has invited the attention of this Court to inner page No.4 of the impugned order of the first respondent dated 12.02.2018 that while culling out the details of the land purchased by the petitioner as per the above said registered sale deeds instead of stating as 3620 sq.ft land erroneously stated as 2620 sq.ft and as a consequence of the said erroneous statement, he has concluded that the petitioner had encroached upon the lands belonging to P.W.D Water resources organisation, Municipality Park and Municipality Street and would further aver that in respect of the sale deeds of the year 1995 and 1997 are concerned, so far no challenge has been made and the Tahsildar of Villupuram vide proceedings dated 16.05.1997 has also granted Patta in respect of the lands in Survey Nos.3/1A1 and 3/1A2 and insofar as the property, which is the subject matter of the registered sale deed dated 06.02.1997 is concerned, steps are being taken to obtain Patta and therefore, prays for setting aside both the impugned orders and permit the petitioner to run the school. The learned counsel would further state that the performance of the school is exceptional and there are many district and state rank holders and in view of the impugned order of the first respondent dated 12.02.2018, a portion of the premises of the school is likely to be demolished, which in turn would affect the students hailing from middle class and downtrodden community and therefore, prays for allowing of both writ petitions.

6. Per contra learned Additional Government Pleader appearing for the second respondent would submit that

admittedly the petitioner is yet to get patta in respect of the land in S.No.2/1A-1, which is the subject matter of the registered Sale Deed dated 06.02.1997 and no plausible explanation has been averred as to why for the past 21 years, no Patta has been obtained and also invited the attention of this Court to the field map and would submit that as per the field map, the petitioner had encroached upon certain portion of the land belonging to P.W.D Water resources organisation, Municipality Park and Municipality Road belonging to Villupuram Municipality and taking into consideration all the relevant records and affording fair and reasonable opportunity, the respondents have rightly concluded that the petitioner is an encroacher and therefore, directed the concerned authorities to take action in accordance with law to remove the encroachment.

7. Mr.P.Srinivas, learned Standing Counsel appearing for the Villupuram Municipality would submit that since the points urged by the learned counsel for the petitioner also revolve around the disputed questions of fact, the remedy open to the petitioner, if any, is to invoke the common law and therefore, prays for dismissal of the writ petitions.

8. This Court paid its best attention to the rival contentions and also perused the materials available on record.

9. A perusal of the impugned proceedings of the Collector of Villupuram District/first respondent dated 12.02.2018 would disclose insofar as the land purchased by the petitioner in S.Nos.3/1 and 2/1A-1, which are subject matter of the Sale Deeds bearing Document Nos.552/95 and 204/97 are concerned, while calculating the total area, instead of stating as 3620 sq.ft, it has been erroneously stated as 2620 sq.ft. In page 4 of the said impugned proceedings, the second tabular column refers to the alleged encroachment on the part of the petitioner over the lands belonging to the Water resources organisation of PWD as well as the Villupuram Municipality.

10. The respective learned counsel appearing for the respondents while drawing the attention of this Court to the field map has pointed out that the petitioner is an encroacher in respect of the land ad-measuring 331 sq.mts belonging to P.W.D Water Resources Organisation, 85 sq.mts. of the Municipality Park and 24 sq.mts of the Municipality Street in S.Nos.1/1A, 2/1 and 3/1 respectively. Admittedly, the petitioner is yet to get patta in respect of the land, which is the subject matter of the registered sale deed dated 06.02.1997.

11. Though it is vehemently contended by the learned counsel appearing for the petitioner that she is the owner of the entire land pursuant to the registered sale deeds dated

06.03.1995 and 06.02.1997, this Court is of the considered view that in exercise of the special original jurisdiction under Article 226 of the Constitution of India, the points urged by the petitioner cannot be dealt with, as it revolve around adjudication on disputed questions of fact and the remedy open to the petitioner, if any, if she is advised, is to invoke the common law remedy.

12. In the light of the above reasons assigned, especially, the adjudication of the dispute revolves around the disputed questions of fact, this Court is not inclined to interfere with the impugned orders, which are subject matters of challenge in these writ petitions. However, if the petitioner is so advised and if it is available under law, she is at liberty invoke common law remedy before the competent civil forum and she may do so within a period of four weeks from the date of receipt of a copy of this order and till such time, the respondents shall defer further decision for removal of encroachment in S.Nos.2/1 and 3/1 admeasuring 85 sq.ft and 24 sq.ft respectively. It is also made clear that till the petitioner invokes common law remedy, she shall not create any third party rights in respect of the said land and superstructures existing thereon and shall also not alter the physical features. If there are other encroachers, the local body viz, Villupuram Municipality is also entitled to proceed against them by following due process of law.

13. The writ petitions are dismissed subject to above observations. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/--

Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner,
Villupuram Municipality,
Villupuram.

2. The District Collector, Villupuram.

+2cc to Mr.P.Srinivas, Advocate Sr.No.35921 & 35920/18

+1cc to Mr.N.Suresh, Advocate Sr.No.35497

+1cc to Government Pleader Sr.No.36065, 36066

SSV(CO)

GSP:21.6.2015

W.P.Nos.11773 and 13571 of 2018