

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.06.2018

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

WP.No.11884 of 2018
and WMP.No.13866 of 2018

1.V.Datchayini

2.P.Vijaya

3. Krishnamurthy

...Petitioners

Vs.

1.The District Collector
Thiruvallur District,
Tiruvallur.

2.The District Revenue Officer
Thiruvallur District,
Chennai.

3.The Tahsildar,
Gummudipoondi Taluk,
Chennai - 600 101.

...Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records on the file of the 3rd respondent and quashing the eviction proceedings initiated vide impugned letter dated 02.04.2018 in Na.Ka.No.3277/2017/A2 and further direct the respondents not to interfere with the peaceful possession of the petitioners herein except by due procedure contemplated under Law.

For Petitioners : Mr.R.Karthikeyan
For Respondents : Mr.R.Udhayakumar
Additional Government Pleader

ORDER

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

By consent, the writ petition taken up for final disposal. Mr.R.Udhayakumar, learned Additional Government Pleader accepts notice on behalf of the respondents 1 to 3.

2.The first petitioner claims that she is the owner of the property in Survey No. 132/5F11 and 132/3D of Kanlur, Village , Gummudipondi Taluk and the said property was a joint family property possessed by Thiru.A.Ponnuranga Naicker and it was settled in her favour vide registered Settlement Deed bearing Document No.5960 of 2015 dated 19.10.2015, registered on the file of the office of the sub-Registrar office , Arani. The second petitioner is the owner of the landed property in Survey No.132/5F12 and 132/3G, of the same village and it was settled in her favour vide Registered Settlement Deed bearing Document No.5961 of 2015 dated 19.10.2015 registered on the file of the same Sub Registrar and similarly, the 3rd petitioner claims to be the owner of the property in Survey No. 101/1B of the same village and a Release Deed bearing Document No.6668/2014 dated 14.09.2011 was executed in her favour, registered on the file of the very same office of the Sub Registrar.

3.It is claim of the petitioners that in between the land, there is battai [Pathway] in Survey Nos. 101/2 and 132/2 and it is in occupation and enjoyment of the petitioners for quite long time and the revenue authorities had also recognised the usage and occupation of the said lands and there was a realignment and a new road connecting Arani Road to Kavarapettai-Sathyavedu Road has been laid and however, it was not reflected in the Village/Revenue Accounts. The grievance expressed by the petitioner is that all of a sudden, the third respondent has sent a communication dated 02.04.2018 in Na.Ka.No.3277/2017/Aa2 to the Inspector of Police, Kavarapettai Police Station, with copies marked to four persons, referring to the removal of the encroachment in Kanlur village Survey Nos.132/3,3B, 3C,3D,3G,3H, 3I, 5F,11,12,13,14,5FG,5F1,5E,5A1,5A2,5B,5C, and through them, they became aware of the fact of removal of the encroachment of the said pathway.

4.The learned counsel appearing for the petitioners would submit that though the said communication would indicate that proceedings are initiated under the provisions of the Tamil Nadu Land Encroachment Act, 1905, no notice whatsoever, has been served on them and without recourse to due process of law, attempts are being made to dispossess the petitioners from the use and enjoyment of the said Battai and therefore, they are constrained to approach this Court, by filing the present writ

petition.

5.Per contra, Mr.R.Udhayakumar, learned Additional Government Pleader appearing for the respondents would submit that there was a consensus reached to remove the encroachment and the petitioners as well as the other occupants are very well aware of the same and as such, the grievance expressed by the petitioners is wholly unfounded.

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

7.In paragraph No.13 of the affidavit filed in support of this writ petition, the petitioners took a specific stand that "no notice as required under section 6 and 7 of the Tamil Nadu Land Encroachment Act, 1905 was issued to the petitioners herein. As stated earlier the Village Baatai was realigned and a new road has been formed and appropriate changes were carried out in the adjacent village, i.e., Ketnamallee Village....".

8.In the light of the said stand taken by the petitioners, they are at liberty to submit a detailed representation to the 3rd respondent, as to their right in respect of the said Baatai / pathway, by enclosing all relevant and authenticated documents within a period of four weeks from the date of receipt of a copy of this order and the 3rd respondent, upon receipt of such representation, shall consider and dispose of the same on merits and in accordance with law within a further period of four weeks thereafter and till such time, shall defer further decision as to the removal of the alleged encroachment in Battai located in S.Nos.101/2 and 132/2 at Kanlur Village, Gummidipoondi Taluk. It is made clear that till the disposal of the representation by the 3rd respondent, the petitioners shall not create any third party rights in respect of the said land/Baatai in question and shall also not alter the physical features of the same.

9.The writ petition stands disposed of with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS V)

Sub Assistant Registrar

AP/MSRM

To

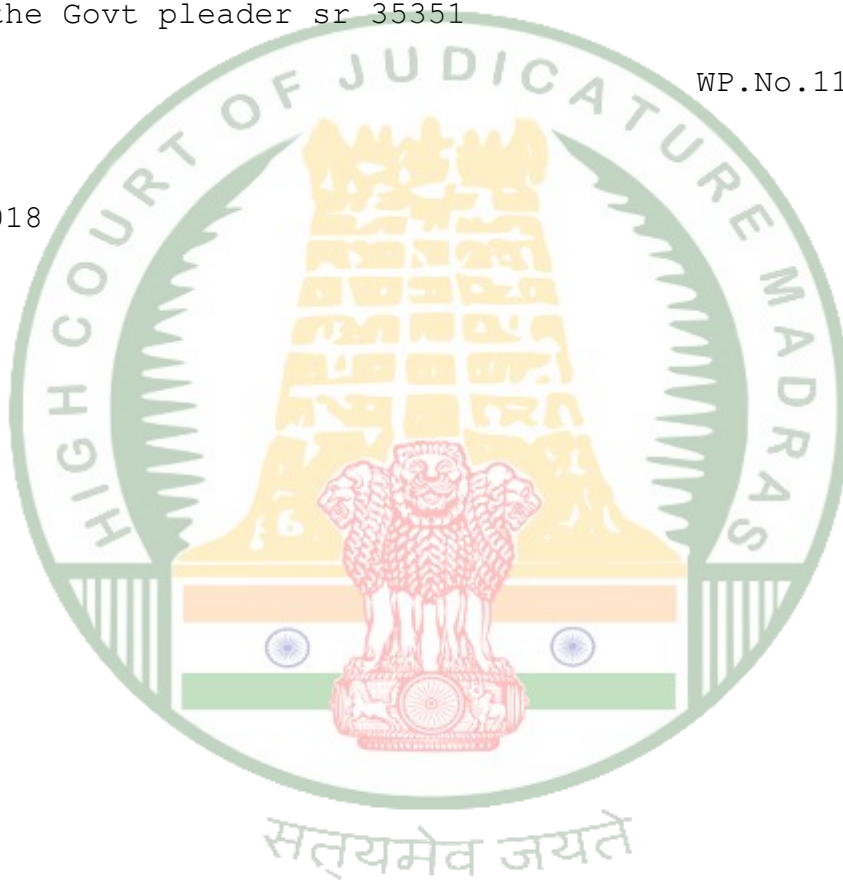
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Chennai - 600 101.

+2 ccs to Mr.R.Karthikeyan Advocate sr 34639

+1 cc to the Govt pleader sr 35351

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