

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2018

CORAM:

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

W.P.No.1307 of 2018
and
W.M.P.No.1643 of 2018

Mrs.Geetha
Vs.
Wellington Cantonment Board,
Ministry of Defence,
Government of India,
Wellington, Tamil Nadu-643 232. .. Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned letter dated 26.12.2017 made in No.Madhu/30/Engg. passed by the respondent, quash the same and consequentially direct the respondent not to interfere with the peaceful possession and enjoyment of the property comprised in R.S.No.22/1A and 106 of Wellington Cantonment, Coonoor Taluk, Nilgiri District measuring an extent of 0.46 acre of land in R.S.No.106 and 0.74 Acre of land in R.S.No.22/A together with building known as Waterloo House.

For petitioner : Mr.S.Ravi for Mr.K.Kannan
For respondents: Mr.M.Vijayan for M/s.King and Patridge

ORDER

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

The petitioner has come forward with the above Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned letter dated 26.12.2017 made in No.Madhu/30/Engg. passed by the respondent, quash the same and consequentially direct the respondent not to interfere with the peaceful possession and enjoyment of the property comprised in R.S.No.22/1A and 106 of Wellington Cantonment, Coonoor Taluk, Nilgiri District, measuring an extent of 0.46 acre of land in R.S.No.106 and 0.74 Acre of land in R.S.No.22/A, together with building known as Waterloo House.

2. Heard both sides and perused the materials available on record. No counter affidavit is filed by the respondent.

3. According to the petitioner, she is the absolute owner of all that piece and parcel of land comprised in R.S.Nos.22/1A and 106 of Wellington Cantonment, Coonoor Taluk, Nilgiri District, measuring an extent of 0.46 acre of land in R.S.No.106 and 0.74 acre of land in R.S.No.22/A, together with building known as Waterloo House and the same was purchased by the petitioner from M/s.Rupe Textiles Private Limited under a registered sale deed dated 27.11.1991 (vide Document No.486 of 1992) on the file of SRO, Coonoor.

4. The case of the petitioner is that ever-since the date of purchase, she is in possession and enjoyment of the aforesaid properties free from all encumbrances without disturbance from any quarters. The Revenue Records do stand in her name and she is paying the tax regularly with the Cantonment upto date without any default. It is further stated by the petitioner that she had raised a compound wall in and around her property after obtaining proper permission from the appropriate authority with a view to safeguard her property. From the date of her purchase till the last week of December 2017, no one had questioned about her property and the property is in her absolute possession and enjoyment. When the facts stood thus, the respondent had issued a letter dated 26.12.2017 in No.Madhu/30/Engg. informing the petitioner's husband as under:

"On site inspection, it is noticed that you have encroached the defence land by erecting compound wall. As the Cantonment Board has intended to lay road on the defence land encroached by you after surveying exact boundaries of defence land at the earliest. Hence you are required to remove the encroachment made by you on the defence land within 7 days from the receipt of this letter."

5. The main grievance of the petitioner is that the property in question is absolutely owned by her and the respondent had issued the letter to her husband without knowing as to who is the owner of the property. Also that, no one attached to the respondent, came and measured her property and in an arbitrary manner, the letter was issued as if the petitioner has encroached the respondent's property, which is against law. In the communication, dated 26.12.2017 of the respondent, the survey number was not mentioned and also in what direction the petitioner had encroached the land in question. In short, the plea of the petitioner is that the letter dated 26.12.2017 issued by the respondent to her husband, is bald one.

6. Per contra, it is the submission of the learned counsel for the respondent that the letter of the respondent dated 26.12.2017 in No.Madhu/30/Engg addressed to the petitioner's husband, points out that the petitioner had encroached the defence land by erecting the compound wall and since the Cantonment Board has intended to lay a road on the defence land encroached by the petitioner after surveying the exact boundaries of defence land at the earliest, and therefore, the petitioner is required to remove the encroachment made by her on the defence land within 7 days from the date of receipt of the letter.

7. Learned counsel for the respondent produced a sketch before this Court and on a perusal of the sketch, it indicates that GLR's No.304, 306 relates to B2 Patta land and GLR's No.307 relates to B4 defence land, under the management of DEO, Chennai. It is also represented on behalf of the respondent that in the defence land of the petitioner, there is an unauthorised Well put up by the petitioner.

8. Considering the fact that the respondent had only issued the letter dated 26.12.2017 addressed to the petitioner's husband, requiring him to remove the encroachment made on the defence land within 7 days from the date of receipt of a copy of the letter, and in this regard, learned counsel for the respondent submits that the said letter only points in regard to the survey being conducted and ascertained the exact boundaries of defence land at the earliest, since the Cantonment Board has intended to lay a road on the defence land encroached, to which there is no objection on the side of the petitioner.

9. Therefore, this Court deems it fit and proper in directing the respondent/Cantonment Board to carry out the survey in regard to the exact boundaries of the defence land, after intimating the petitioner and if need be, the survey shall be conducted in the presence of the petitioner or her husband or any other authorised representative, within two weeks from the date of receipt of a copy of this order. Before conducting the survey, it cannot be gainsaid that the respondent-Cantonment Board shall serve an advance notice specifying the date, time and the place of conducting the survey and it is open for the petitioner to put-forth all her factual and legal pleas before the authority concerned, who shall take note of the same and take a final call in the subject matter in question, within the period aforestated.

10. With the above observations and directions, the Writ Petition is disposed of. No costs. Consequently, W.M.P. is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

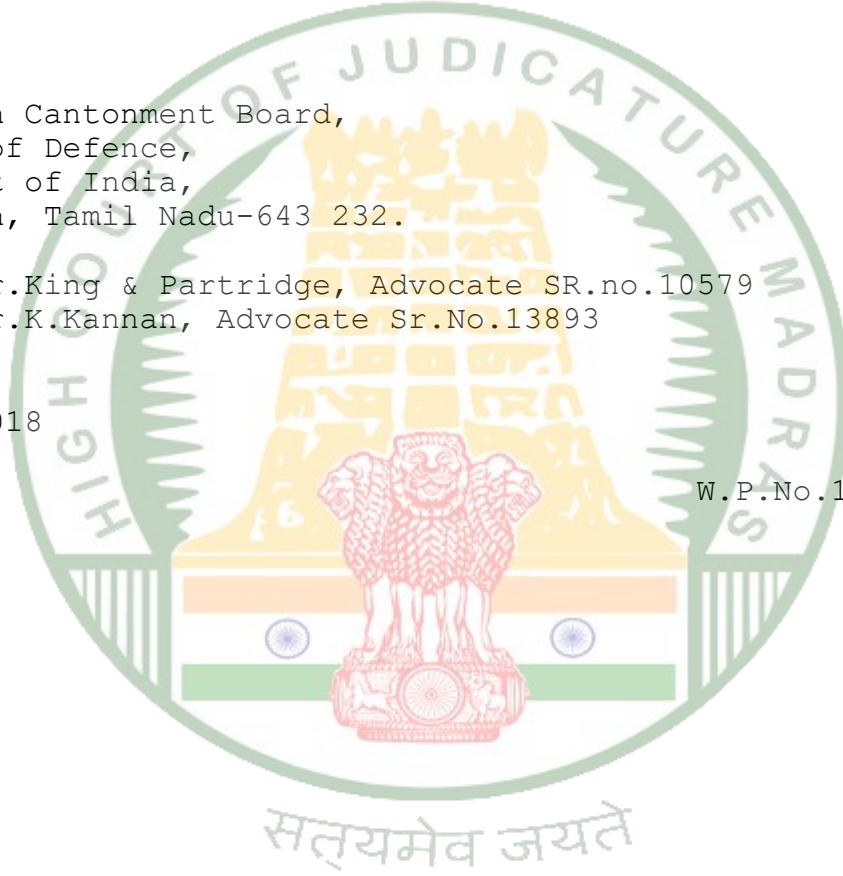
CS

To
Wellington Cantonment Board,
Ministry of Defence,
Government of India,
Wellington, Tamil Nadu-643 232.

+1cc to Mr.King & Partridge, Advocate SR.no.10579
+1cc to Mr.K.Kannan, Advocate Sr.No.13893

AP (CO)
sm:27.2.2018

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