

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.06.2018

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

WP.No.13130/2018 & WMP.No.15433/2018

N.Raja

Petitioner

Versus

1.The District Collector
The Nilgiris District
Udhagamandalam.

2.The Tahsildar
Udhagamandalam,
The Nilgiris District.

3.Firka Revenue Inspection
Sholur Firka, Udhagamandalam Taluk
The Nilgiris.

Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records relating to the impugned order under section 6 of the Land Encroachment Act, 1905, dated 14.05.2018 of the 2nd respondent herein and quash the same.

For Petitioner : Mr.AR.L.Sundaresan, SC for
Mrs.A.L.Gandhimathi

For RR 1 to 3 : Mr.A.N.Thambidurai, Spl.GP

ORDER

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

By consent, the writ petition is taken up for final disposal. Mr.A.N.Thambidurai, learned Special Government Pleader appears on behalf of the respondents.

2 The petitioner claims to be in possession and enjoyment of the land admeasuring to an extent of 0.40.5 Hectares in S.No.466/2, Naduvattam Village, Udhagamandalam, The Nilgiris District for more than 25 years and at the time of her occupation, it was a dry land and the petitioner has taken hard, earnest and sincere efforts to convert the same into an agricultural land and is purely using it for agricultural purposes and Penalty has been collected and B-Memos have also been issued. It is further averred by the petitioner that she had submitted a representation dated 23.04.2018, alleging that one local Councilor had put up an unauthorised construction and infuriated by the same, the said Councilor had instigated the Revenue Officials to proceed against the petitioner by invoking the provisions of the Tamil Nadu Land Encroachment Act, 1905, and without considering the same, notice under section 6 of the said Act has been issued and challenging the legality of the initiation of the proceedings under the provisions of the said Act, the petitioner came forward to file the present writ petition.

3 Mr.Ar.L.Sundaresan, learned Senior Counsel assisted by Mrs.A.L.Gandhimathi, learned counsel for the petitioner has invited the attention of this Court to the typed set of documents and would submit that possession of the petitioner in respect of the land in question has been recognised for the reason that she is in possession and enjoyment of the same for over 25 years and by borrowing money and putting hard work, has converted the dry land into an agricultural land and it is also subject to penalty and B-Memos have also been issued and only at the instigation of the local Politician, the present action is taken and therefore, prays for interference.

4 Per contra, Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents would submit that since the petitioner is having an effective alternate remedy under section 10 of the Tamil Nadu Land Encroachment Act, 1905, the writ petition is not maintainable and prays for dismissal of the same.

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

6 This Court, taking into consideration, the above facts and circumstances and without going into the merits of the claim projected by the petitioner, permits the petitioner to file an appeal u/s.10 of the Tamil Nadu Land Encroachment Act, 1905, along with a petition for stay u/s.10-B of the said Act to the 1st respondent - Appellate Authority by enclosing relevant and authenticated documents, within a period of four weeks from the date of receipt of a copy of this order and the 1st respondent or

the Delegated Authority/Official shall entertain the said appeal along with the petition for stay, if the papers are otherwise in order and thereafter, take up the petition for stay at the first instance and give a disposal in accordance with law within a further period of four weeks thereafter and till such time, the respondents 2 and 3 shall defer further decision in terms of the notices issued u/s.7 and 6 of the Tamil Nadu Land Encroachment Act, 1905. The 1st respondent or the Delegated Authority is also at liberty to take up the main appeal itself and give a disposal on merits and in accordance with law within a period of ten weeks from the date of entertainment of the same and communicate the decision taken, to the petitioner herein.

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

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

AP

To

- 1.The District Collector
The Nilgiris District
Udhagamandalam.
- 2.The Tahsildar
Udhagamandalam,
The Nilgiris District.
- 3.Firka Revenue Inspection
Sholur Firka, Udhagamandalam Taluk
The Nilgiris.

+1cc to Ms.AL.GANTHIMATHI, Advocate, S.R.No.35419
+1cc to the Government Pleader, S.R.No.35356

WP.No.13130/2018

RSK(CO)
TR(05/07/2018)