

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.11.2018

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE Mr. JUSTICE R.PONGIAPPAN

W.P.No.23305 of 2018 and
W.M.P.Nos.27206 and 27207 of 2018

Jayanathi ... Petitioner

Vs.

1. The District Collector,
Thiruvallur District
Thiruvallur

2. The Tahsildar,
Ponneri Taluk,
Ponneri

... Respondents

Prayer: Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the 2nd Respondent proceedings in Na.Ka.7947/2015/Aa1 dated 13.05.2015 and the 1st Respondent proceedings in Na.Ka.28561/2016/A2 dated 18.05.2018 and quashing the same and consequently, forbearing the Respondents from evicting the Petitioner from the premises.

For Petitioner : Mr.B.Srinivasan

For Respondents: Mr.J.Pothiraj
Special Government Pleader

O R D E R

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

Heard the Learned Counsel for the Petitioner and the Learned Special Government Pleader for the Respondents.

2. It is the stand of the Petitioner that a house plot was assigned to her mother with an extent of three cents by an order issued by the 2nd Respondent / Tahsildar, Ponneri of Ponneri Taluk. In fact, Survey No.126 of Chennivakkam Village was

subdivided into Survey Nos.126/1 and 126/2, as mentioned in FMB Sketch. The Petitioner's mother's house as well as the other house, which were constructed on the plots assigned to the village are situated in Survey No.126/2. Based on the representation made by the concerned persons to the Block Development Officer, seeking issuance of patta for their respective house, an enquiry was conducted by the Block Development Officer, who inspected the place and gave a letter dated 16.02.2001 to the 2nd Respondent / The Tahsildar, Ponneri Taluk, Ponneri recommending the issuance of patta.

3. When that be the fact situation, the 2nd Respondent / the Tahsildar, Ponneri Taluk, Ponneri had issued a notice on 16.04.2015 to the Petitioner and others, as per Section 7 of Tamilnadu Land Encroachment Act, 1905.

4. The specific case of the Petitioner is that she along with others met the 1st Respondent / District Collector, Thiruvallur in-person. She showed the documents including the order of assignment order issued by the 2nd Respondent and she was assured by the 1st Respondent that no eviction would be carried out. However, the grievance of the Petitioner is that on 13.05.2015, the 2nd Respondent had issued a impugned notice as per Section 16 of the Tamilnadu Land Encroachment Act, 1905 without providing an opportunity to the Petitioner to hear her views and further, she was directed to vacate the house / premises within one week from the date of receipt of Notice.

5. Further, this Court in W.P.No.15109 to 15113 of 2015 passed an order on 21.05.2015 stating that the parties are directed to maintain status quo for two weeks etc., Moreover, on 18.05.2018 the 1st Respondent / the District Collector, Thiruvallur passed an order directing the 2nd Respondent / Tahsildar, Ponneri Taluk, Ponneri to vacate the Petitioner and other residents from the premises and file a report with photo. The 2nd Respondent came in-person and orally informed the Petitioner and others that their house would be demolished on 07.08.2018.

6. The Learned Counsel for the Petitioner contents that the Impugned Order dated 18.05.2018 issued by the 1st Respondent / the District Collector, Thiruvallur directing the 2nd Respondent / the Tahsildar, Ponneri to vacate the Petitioner and other residents from the premises is an illegal one. Further, without providing an alternative accommodation, the issuance of notice dated 18.05.2018 is illegal and an arbitrary one. Hence, the Petitioner has filed the present Writ Petition.

7. Per contra, it is the submission of the Learned Special Government Pleader for Respondents that the 1st Respondent / the District Collector, Thiruvallur on 18.05.2018 had dismissed the Appeal and directed the encroachers occupying the land being Tank Poromboke in Survey no.126 in Chennivakkam Village to vacate the land or otherwise a direction would be issued to vacate them etc., In fact, the land 0.03 cents was assigned to one Tmt.Sumathi, mother of the Petitioner on 21.11.1973, which does not pertain to the property in question. It is further represented on behalf of the Respondents that taking advantage of the said assignment, the assignee encroached upon the present land, which is classified as 'Tank Poromboke'. As such, notices were issued to the concerned encroachers under the Tamilnadu Land Encroachment Act, 1905, which was assailed in W.P.Nos.15109 to 15113 of 2015 and an order of Status Quo was obtained. Later, other encroachers, who filed W.P.Nos.15139 to 15145 of 2015 had filed an Appeal under Section 10 of the Act, 1905 before the 1st Respondent and this Court on 18.10.2016 passed an order that the Writ Petitions become infructuous one and directed the Petitioners to agitate their grievances in the said Appeal.

8. The prime plea taken on behalf of the Respondents is that the portion encroached by the Petitioner is an objectionable Tank Poromboke Land and in order to protect waterways and to protect the channels, canals, reservoirs and further, taking public interest in mind, the impugned proceedings dated 18.05.2018 was issued in the subject matter in issue. Finally, it is projected on the side of the Respondents that the Petitioner has no right to occupy the 'Tank Poramboke', since she is an encroacher.

9. Besides the above, the Learned Special Government Pleader for the Respondents brings it to the notice of this Court that the present Writ Petitioner is assigned the land in Survey No.50/1 measuring an extent of 00080 square meter and the classification of land is mentioned as 'Anadenam', as per proceedings of 2nd Respondent / Tahsildar, Ponneri dated 20.09.2018. In fact, in the said proceedings of the 2nd Respondent, 17 other persons were also given an alternative accommodation.

10. In view of the fact that the 2nd Respondent had issued a proceedings dated 20.09.2018 in and by which the Petitioner is allotted with an alternative place in Survey No.50/1 'Anadenam' measuring an extent of 00080 square meter at Thachur - 1, Madura Chennivakkam Village, this Court grants time to the Petitioner to vacate from the subject property within a period of two weeks from the date of receipt of a copy of this order. Viewed in that perspective, this Court holds that nothing survives for

further adjudication in the present Writ Petition. Accordingly, the present Writ Petition stands closed. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

ssd

To

1. The District Collector,
Thiruvallur District
Thiruvallur
2. The Tahsildar,
Ponneri Taluk,
Ponneri.

+lcc to Mr.B.Srinivasan, Advocate Sr.79406
+lcc to the Government Pleader Sr.79542

W.P.No.23305 of 2018 and
W.M.P.Nos.27206 and 27207 of 2018

mr[co]
srg 13/12/2018

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