

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.06.2018

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
and

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

WP.No.13238 of 2018
and WMP.Nos.15594 & 15595 of 2018

A.Adhilakshmi

...Petitioner

Vs.

1.The District Collector,
Thiruvallur District,
Thiruvallur.

2.The Revenue Divisional Officer,
Thiruthani,
Thiruvallur District.

3.The Tahsildar,
Pallipattu Taluk,
Thiruvallur District.

...Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India
praying for issuance of Writ of Mandamus, directing the respondents to
consider the petitioner's representation dated 26.03.2018

For Petitioners : Mr.M.Udhaya Bhanu

For Respondents : Mr.R.Udhaya kumar,
Additional Government Pleader

ORDER

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

By consent, the writ petition is taken up for final disposal. Mr.R.Udhaya Kumar, learned Additional Government Pleader accepts notice on behalf of respondents.

2. The petitioner claims that her husband eking out his livelihood as Coolie and she along with her family, is residing in the site and superstructure bearing Survey No.393/2, Vanivilasapuram Colony, Pallipattu Taluk, Thiruvallur District-631 208 for over 60 years and she has been issued with Family Card during 2005-2009, bearing No.04/G/0066912, Voter's Identity Card issued by Election Commission of India bearing No.IBW0534503, Aadhar Card No.5055 5938 0932 and that apart, superstructure put up on the said site is also subjected to statutory levies. The petitioner would further submit that one Mr.S.C.Annamalai has filed W.P.No.28747/2017 against the respondents 1 and 3 praying for issuance of writ of mandamus directing them to take necessary action to remove the encroachments in Bakulavani Kulam in Survey No.393/2 of Melapoondi Village of Pallipattu Taluk, Thiruvallur District by considering his Second Appeal dated 31.05.2017, which was disposed of on

13.11.2017 by directing the respondent/authority to take steps in accordance with law to remove the encroachments, after putting on notice all persons concerned and conclude the proceedings within two months from the date of receipt of copy of that order.

3. The 2nd respondent, in compliance of the same, has issued the impugned notice dated 26.02.2018 under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, and immediately, the petitioner has submitted a representation dated 26.03.2018 pointing out the said issues. Though it was received and acknowledged on the same day, no further action is being taken to remove the encroachments and therefore, she came forward to file this writ petition.

4. Mr.M.Udhaya Bhanu, learned counsel appearing for the petitioner would submit that admittedly in W.P.No.28747/2017 filed by one Mr.S.C.Annamalai, petitioner and other encroachers have not been arrayed as parties and in the event if she or other encroachers being shown as encroachers, they would get an opportunity to put forth the said fact and would further add that since the petitioner and her family are residing in the site and superstructure in question for over 40 years and on account of issuance of Family card, Voter's ID card, and Aadhar Card and also

provided with Government freebies, their possession has been regularised and therefore prays for appropriate orders.

5. *Per contra*, Mr.R.Udhaya kumar, learned Additional Government Pleader appearing for the respondents would submit that only in compliance of the above cited order, action is being taken strictly in accordance with law and would further add that since the petitioner is having effective alternate remedy, prays for dismissal of this writ petition.

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

7. A perusal of the materials placed before this Court would indicate that action has been taken by the 3rd respondent in compliance of the order dated 13.11.2017 made in WP.No.28747/2017 and therefore it cannot be found faulted with.

8. It is relevant to extract section 10 of the Tamil Nadu Land Encroachment Act, 1905:-

“Section 10:- *An appeal shall lie [a] to the Collector from any decision or order passed by a Tahsildar or Deputy-Tahsildar*

[or an authorised officer] under this Act, and [b] to the District Collector from any decision or order passed otherwise than on appeal, and [c] to the Board of Revenue from any decision or order of a District Collector otherwise than on appeal.

Section 10-B:- *Pending disposal of any appeal or application or proceedings for revision under this Act, the Collector, the District Collector, the Board of Revenue, or the State Government, as the case may be, may by order, and subject to such conditions as may be specified therein, stay the execution of the decision or order appealed against or sought to be revised.”*

9. In the light of the effective alternate remedy available, the petitioner is at liberty to file an appeal under Section 10 of the Tamil Nadu Land Encroachment Act, 1905 along with petition for stay under Section 10-B of the said Act by enclosing relevant and authenticate documents to the 1st respondent / appellate authority / delegated authority within a period of four weeks from the date of receipt of copy of this order and upon receipt of the same, the 1st respondent or the delegated official shall entertain the appeal along with petition for stay, if the papers are otherwise in order and give disposal on merits and in accordance with law within a further period of eight weeks thereafter and the 2nd respondent shall defer further decision in terms of the impugned Section 7 notice dated 26.02.2018. It is made clear that the petitioner, till the disposal of the appeal by the 1st respondent

/ delegated / appellate authority, shall not create any third party rights in respect of the site and superstructure in question and shall not alter the physical features also.

10. With the above direction, this writ petition stands disposed of. No costs. Consequently connected miscellaneous petition is closed.

{M.S.N.J} {G.K.I.J}

08.06.2018

Index : Yes/No

Internet: Yes/No

Speaking Order/Non Speaking Order

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To

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M.SATHYANARAYANAN, J.

AND

G.K.ILANTHIRAIYAN, J.

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