

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.02.2018

Coram

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

W.P.No.1933 of 2018 and
W.M.P. Nos.2425 and 2426 of 2018

Jayalakshmi .. Petitioner
Vs.

The Special Officer / Block
Development Officer
(Village Panchayat)
Kandamangalam Panchayat Union,
Villupuram District ..Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari calling for the records in connection with the eviction notice of the Respondent dated 12.01.2018 issued under Section 6 of the Tamil Nadu Land Encroachment Act, 1905, Act III of 1905, against the Petitioner in respect of 0.03.0 ares of land in Survey No.60/1 of Azhiyur village and quash the same.

For Petitioner : Mr.R.Srinivas

For Respondent : Mr.R.Udayakumar
Additional 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 Additional Government Pleader for the Respondent. By consent, the main Writ Petition itself is taken up final disposal.

2. According to the Petitioner, she is a resident of Azhiyur Village and is in possession of 0.03.0 ares of land in Survey No.60/1 in the said village, which is classified as 'Poramboke Lands'. Her husband's forefathers and thereafter, her husband and herself are in possession of the said lands measuring 7.45 cents for the past 100 years. She is in possession of the said lands peacefully and continuously for the entire period till date.

3. The stand of the Petitioner is that she has constructed the buildings in the aforesaid lands and rented out a house and leased out shops in the said property and her tenants are running a Flour Mill, Hotel and Grocery Store in the said property in the portions leased out to them. Furthermore, one more house was constructed in the said property, which is now vacant. At this stage, the Learned Counsel for the Petitioner submits that the Petitioner's buildings are assessed to property tax by the Azhiyur Village Panchayat. She was granted electricity connections to the property and there are four electricity connections to the property and further that, there are three tenants carrying on business in the said property and one tenant living in the said property, when that be the aforesaid factual position, the Respondent had issued a notice on 21.12.2017 [under Section 7 of the Tamilnadu Land Encroachment Act] calling upon the Petitioner to show cause why she could not be evicted from the afore-stated lands belonging to the Government and why the encroachments should not be removed within 15 days from the date of receipt of this notice. Indeed, the Petitioner had received a notice dated 27.12.2017.

4. The version of the Petitioner is that she appeared before the Respondent on 09.01.2018 and submitted a written objections to the impugned notice, but, there was no communication or notice from the Respondent. On 24.01.2018, she received an eviction notice of the Respondent dated 12.01.2018 directing her to vacate the above lands on or before 30.01.2018 whereby and whereunder it was mentioned that otherwise she would be evicted from the said lands through force.

5. The core contention advanced on behalf of the Petitioner is that the Impugned Eviction Notice dated 12.01.2018 passed by the Respondent is arbitrary, unfair and in violation of Tamilnadu Encroachment Act and apart from that, the Respondent has passed an impugned eviction notice without considering or mentioning the written objections in the notice dated 12.01.2018 and in fact, according to the Petitioner, she had filed the objections on 09.01.2018. In short, the submission of the Learned Counsel for the Petitioner is that there is negation of 'Principles of Natural Justice.'

6. Per contra, it is the submission of the Learned Counsel for the Respondent that the Petitioner was issued with notice under Section 7 of the Tamilnadu Land Encroachment Act, 1905 dated 21.12.2017 (Signed by V.Rajendran on 28.12.2017- Petitioner in W.P.No.1934 of 2018) and that by the said notice, the Petitioner was duly informed that she should submit her objections in writing or appearing in person within

a period of 15 days from the date of receipt of copy of the notice. However, the Petitioner had not appeared before the concerned authority, as specified in the notice dated 21.12.2017.

7. It comes to be known that the Petitioner had indeed, addressed a communication / representation to the Block Development Officer (Village Panchayat), Kandamangalam Panchayat Union, Villupuram dated 09.01.2018, for the notice dated 21.12.2017, however, that has not been taken into account by the Respondent and in fact, the Impugned Order of Eviction dated 12.01.2018 was passed by the Respondent in terms of Section 6 of the Tamilnadu Land Encroachment Act, 1905.

8. It is to be pointed out that when an aggrieved party or a litigant submits a representation / written objections before the competent authority in respect of the notice issued by the concerned authority, requiring that party to do a Specific Act within a specified period and when the Respondent has not considered or dealt with any of the objections / points raised by the Petitioner / concerned complainant in the final orders passed by him, then, in Law, the same is liable to be set aside, based on the principle that the authority concerned had not applied his thinking judicial mind. Even though, the Respondent is an administrative authority, still the 'Principles of Natural Justice' requires the authority, namely, the Respondent to consider the objections of the Petitioner and to deal with the representation / points or objections of the Petitioner in a fair, just, free, objective and dispassionate manner. However, in the present case, the Respondent has not adverted to any of the points raised by the Petitioner in a representation dated 09.01.2018, which had resulted in serious miscarriage of justice with the passing of an Impugned Order of Eviction Notice issued under Section 6 of the Act. In this Connection, this Court very pertinently points out that as per Section 7 of the Tamilnadu Land Encroachment Act, 1905 [Act III of 1905] prior notice to a person in occupation is to be given by the authorised officer or any other officer, specified by the State Government in this behalf.

9. In the instant case, in the notice dated 21.12.2017 issued under Section 7 of the Tamilnadu Land Encroachment Act to the Petitioner, she had submitted her objections / return objections / representation on 09.01.2018 addressed to the Block Development Officer (Village Panchayat), Kandamangalam Panchayat Union, Kandamangalam that was not considered or taken into account by the Respondent at the time of passing the impugned order, as such, this Court, left with no other option except to interfere with the Impugned Order of Eviction Notice dated 12.01.2018 passed by the Respondent and sets aside the same, consequently, the Writ Petition succeeds.

10. In fine, the Writ Petition is allowed leaving the parties to bear their own costs. Consequently, the Miscellaneous Petitions are closed. Since this Court sets aside the impugned notice dated 12.01.2018 issued by the Respondent, the said Authority is directed to issue a fresh notice to the Petitioner by adhering to the necessary ingredients of Tamilnadu Land Encroachment Act, 1905 and at the time of issuance of fresh notice and later while passing final orders, the Respondent is to take into account of the earlier written objections of the Petitioner dated 09.01.2018 and to pass a reasoned speaking order with qualitative and quantitative details after adhering to the 'Principles of Natural Justice' and also by issuing notice to the complainant, if any, and other authorities, of course, in the manner known to Law and in accordance with Law. It is open to the Petitioner to raise all factual / legal aspects / issues involved in the subject matter before the Respondent, who shall advert to the same and to answer the same by meeting out each and every points raised by the Petitioner. It cannot be gainsaid that the Respondent is to pass a final orders in question (based on issuance of fresh show cause notice to the Petitioner] untrammelled and uninfluenced with any of the observations made by this Court in the Writ Petition.

11. Before parting with the case, it is pertinent to point out that in the instant case where the notices issued under Sections 6 and 7 of Tamilnadu Land Encroachment Act, 1905 are challenged on the ground that without considering the Petitioner's representation, on receipt of notice under Section 7 of Tamilnadu Land Encroachment Act, orders are passed straight away by the concerned Authority under Section 6 of the Act. However, there is no reply given by the Petitioner to the Impugned Notice dated 12.01.2018 issued under Section 6 of the Act, 1905. In Law, the Petitioner is required to submit a reply, given a personal hearing and thereafter, referring to the objections / documents filed if any, the authority concerned shall pass reasoned orders on merits. Besides the above, no Writ Petition will be ordinarily entertained assailing the Notice under Section 7 of the Tamilnadu Land Encroachment Act, as the Petitioner (as an aggrieved person) has a valid and legal right to offer her objections before the concerned Authority, who is required to pass an order under Section 6 of the Act.

12. Further, the Registry is directed to mark a copy of this order to the Principal Secretary to Government, Housing and Urban Development Department, Chennai and in turn, the said authority is directed to communicate this order to all the Authorities, who are empowered to deal / dispose of the Petitions filed under the relevant Provision(s) of the Tamilnadu Land Encroachment Act, 1905 and to follow the procedure laid down in this order while passing final orders, of course, after affording opportunity to the complainant, if any and others, who are likely to be affected / evicted and

pass final orders, as per ingredients of under Section 6 of the Act, 1905.

Apart from that, although Section 10 of the Tamilnadu Land Encroachment Act, 1905 provides for 'Filing of an Appeal', this Court is of the considered view that in the present case, there is a flagrant violation of 'Principles of Natural justice', and as such, this Court is empowered to set aside the impugned notice / order dated 12.01.2018. It cannot be gainsaid that if orders are passed in detail, viz., in a qualitative and quantitative manner, then, the affected party can prefer an effective and efficacious remedy of an Appeal (which can be availed by her) as envisaged under the Tamilnadu Land Encroachment Act, 1905 (Act III of 1905).

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

ssd

To

1. The Special Officer / Block Development Officer
(Village Panchayat)
Kandamangalam Panchayat Union,
Villupuram District.

2. The Principal Secretary to Government Housing & Urban
Development Dept., Chennai.

+ 1 cc to Mr.R. Srinivas, Advocate Sr.7514

W.P.No.1933 of 2018 and
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PA(CO)
EU(26/02/2018)

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