

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.11.2018

Coram

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

W.P.No.27865 of 2017 and
WMP Nos.29887 and 29888 of 2017

P.Padmavathy

.. Petitioner

Vs.

1. The Commissioner,
Corporation of Erode,
Erode

2. The Assistant Commissioner,
Zone- 3, Corporation of Erode,
Erode.

...Respondents

Prayer: Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari calling for the records of the 2nd Respondent in Na.Ka.No.E2/3991/2013 dated 12.10.2017 and quash the same.

For Petitioner : Mr.T.Gowthaman

For Respondents : Mr.M.Rajamathivanan

सत्यमेव जयते
O R D E R

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

Heard both sides.

2. The Petitioner is residing in No.70 at R.S.No.131/1 of Muthampalayam Village from the year 2002. She has a small tiled house in the said land and the said house is assessed to property tax from the year 2002. She has electricity connection and also water connection from the year 2002 and 2007 respectively. She is issued with the Voter's Identity Card, Aadar Card as well as the Smart Ration Card to prove her

residence and is continuous possession of the said property in question.

2. The grievance of the Petitioner is that the Impugned Order dated 12.10.2017 issued by the 2nd Respondent / Assistant Commissioner, Zone-3, Corporation of Erode, Erode is an illegal and arbitrary one because of the reason that the said notice does not pinpoint to a particular Section of the Tamilnadu Land Encroachment Act, 1905 [Act 3 of 1905]. Further, in the said notice, the Petitioner was described as an 'Encroacher' where she had put up the construction in question. Also that, she was required to remove appending construction / encroached portion within seven days from the date of receipt of copy of the notice.

3. At this juncture, the Learned Counsel for the Petitioner emphatically contends that the Impugned Notice dated 12.10.2017 suffers from non-application of mind by the concerned authority and also in negation to the Principles of Natural Justice. Furthermore, it is represented on behalf of the Petitioner that the land in question has lost its character as 'Odai Poramboke' and the impugned notice proceeds on the basis of an obsolete classification, as such, the same is liable to be interfered with by this Court and consequently, is to be set aside in the interest of justice.

4. Per contra, it is the submission of the Learned Counsel for the Respondents that in the concerned Muthampalayam Village ongoing process channel and lake dredging project was carried out by the contractor in R.S.Nos.129,130 and 131, situated near the bus stand of the village and while carrying out the said project, the contractor had not removed the entire encroachment in the said survey numbers. As a matter of fact, some of the villagers were issued with the Notice to remove the encroachments with a view to carry out the contract work. Since there was a delay, one Balasubramaniam filed W.P.No.21563 of 2017 and in the said Writ Petition, a direction was issued to the Revenue Department to find out the persons, who had encroached the property and necessary details of encroachment and extent of encroachment made were to be mentioned by the Department.

5. The categorical plea taken on behalf of the Respondents is that R.S.Nos.129, 130 and 131 of Muthampalayam Village is only 'Odai Poramboke' and no one is authorised to occupy the same. Furthermore, the encroachment cannot be allowed in 'Odai Poramboke' because of the reason that during rainy season it will create problem to the villagers. In short, it is projected on the side of the Respondents that the present Writ Petition filed by the Petitioner is perse not maintainable in the eye of Law.

6. This Court has heard the Learned Counsel for the Petitioner and the Learned Counsel for the Respondents and noticed their contentions.

7. At this juncture, this Court on a perusal of the Impugned notice dated 12.10.2017 issued by the 2nd Respondent addressed to the Petitioner is of the considered view that in the said notice, there is no mention of a particular Section of the Tamilnadu Land Encroachment Act, 1905.

8. Ordinarily, the Impugned Notice will mention under what Section and Act / Rule is issued to the concerned party / Litigant. Unfortunately, the Impugned Notice is not issued in conformity with the ingredients of Section 7 of the Tamilnadu Land Encroachment Act, 1905 [hereinafter referred to as Act, 1905]. As per Section 7 of the Act, 1905, prior notice to the person in occupation is to be issued. To put it succinctly, before initiating proceedings as per Section 6 of the Act, 1905, the Collector or Tahsildar or Deputy Tahsildar or Revenue Inspector or any Authorised Officer or any Other Officer specified by the State Government shall issue a notice to the affected person pointing out the unauthorised occupation of the land belonging to the Government. In short, a show cause notice is to be given to the affected party. In reality, such notice is to be served as specified under Section 25 of the Tamilnadu Revenue Recovery Act, 1864 or in such other manner as the State Government by Rules or Orders under Section 8 may direct.

9. It is well settled principle in Law that a forcible or coercive eviction by the Revenue Authorities without adhering to the legal requirements as per Sections 6 and 7 of Act, 1905 and demolition of the premises are exfacie illegal and Court of Law is entitled to pass an order of Restitution / Restoration of the concerned House / Premises occupied by the affected earlier to her eviction.

10. Be that as it may, since the Impugned Notice dated 12.10.2017 does not expressly mention about Section 7 of the Tamilnadu Land Encroachment Act, 1905, this Court directs the Petitioner to treat this notice, as the one issued under under Section 7 of the Act, 1905. To the said notice dated 12.10.2017, the Petitioner is directed by this Court to offer her explanation or substantiate her case by means of representation in writing before the 2nd Respondent raising all factual and legal pleas. The said representation shall be submitted by the Petitioner before the 2nd Respondent within a period of ten days from the date of receipt of a copy of this order. It is open to the Petitioner to produce all relevant materials like documentary evidence at her command before the 2nd Respondent, who shall take into account of the same and to

advert about the same at the time of passing final orders by meeting out each and every point raised by the Petitioner and that too in a qualitative and quantitative term. The said final order is to be passed by the 2nd Respondent in a just, free, unbiased and dispassionate manner, ofcourse after providing an opportunity of hearing to the Petitioner by adhering to the 'Principles of Natural Justice'. In case, if the Petitioner prays for personal or oral hearing that may also be granted by the 2nd Respondent without any hesitation or haziness whatsoever. The 2nd Respondent shall pass the final orders in the subject matter in issue within a period of four weeks thereafter. The Petitioner is further directed to offer her unstinted co-operative assistance to the 2nd Respondent so as to enable the latter to complete the enquiry and to pass orders within the time adumbrated by this Court. Till the passing of final orders by the 2nd Respondent / Assistant Commissioner, Zone 3, Corporation of Erode, Erode, the possession and enjoyment of the property by the Petitioner shall not be displaced / disturbed by any one.

With the above said observations and directions, the Writ Petition stands disposed of. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ssd
To

1. The Commissioner,
Corporation of Erode,
Erode

2. The Assistant Commissioner,
Zone- 3, Corporation of Erode,
Erode.

+lcc to Mr.T.Gowthaman, Advocate, S.R.No.81837
+lcc to Mr.M.Rajamathivanan, Advocate, S.R.No.87692

W.P.No.27865 of 2017 and
WMP Nos.29887 and 29888 of 2017

KJ(CO)
CS/07/01/2019