

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2018

CORAM:

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

W.P.No.28584 of 2018
and
W.M.P.No.33446 of 2018

A.Thamayanthi .. Petitioner

Vs.

1. The District Collector, Chennai-600 001.
2. The Commissioner,
Greater Chennai Corporation,
Ripon Buildings, Chennai-3.
3. The Superintending Engineer,
Public Works Department,
Kamarajar Salai, Chennai.
4. The Assistant Engineer,
Public Works Department,
Cooum River Station,
Cooum River Improvement Sub-Division,
Chennai-9.
5. The Assistant Engineer,
Ward No.73, Corporation of Chennai,
Chennai-29.
6. The Revenue Divisional Officer,
Shenoy Nagar, Aminjikari, Chennai-600 030.
7. The Tahsildar,
Shenoy Nagar, Aminjikarai, Chennai-600 030.
8. The Revenue Inspector-II,
Aminjikarai Firka,
Shenoy Nagar,
Chennai-29.

9. The Deputy Commissioner of Police,
Anna Nagar District,
Chennai-600 040.

10. The Inspector of Police,
K.3 Aminjikarai Police Station,
Chennai-29.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to forbear the respondents 3 to 8 from evicting the petitioner herein from the property comprised in S.No.70/13, Block No.31, bearing Old Door No.57, New Door No.105, Kannaiya Street, Aminjikarai, Chennai-600 029, without due process of law.

For petitioner : Mr.D.Rajagopal

For respondents: Mr.J.Pothiraj,
Spl.G.P. for RR-1, 3, 4 and 6 to 10
Mr.A.Nagarajan for RR-2 and 5

ORDER

(The Order of the Court was made by M.Venugopal, J)

The petitioner has come forward with this Writ Petition praying for issuance of a Writ of Mandamus to forbear the respondents 3 to 8 from evicting her from the property comprised in S.No.70/13, Block No.31, bearing Old Door No.57, New Door No.105, Kannaiya Street, Aminjikarai, Chennai-600 029, without due process of law.

2. According to the petitioner, the Land measuring an extent of 3000 Sq.Ft. comprised in S.No.70/13, Block No.31, bearing Old Door No.57, New Door No.105, Kannaiya Street, Aminjikarai, Chennai-600 029, classified as Grama Natham, was originally owned by one Ayyam Perumal. In the said land, a Temple, namely Sri Prasanna Santha Swoorupa Ayodhi Anjaneyar Temple was in existence for over 70 years. The said Temple was administered and maintained by the said Ayyam Perumal. The said Ayyam Perumal had executed a Settlement Deed, registered as Document No.3821 of 1964, dated 06.10.1964 in favour of his wife Ananthammal in respect of the aforesaid property. After the death of Ayyam Perumal, the settlee, namely Ananthammal, pursuant to the settlement deed, was in possession and enjoyment of the property and maintaining and administering the Temple. Subsequently, the said Ananthammal transferred her right, title and interest in favour of the petitioner in the year 1989 and from then onwards,

the petitioner is in possession and enjoyment of the property and also administering and maintaining the Temple.

3. It is represented that the petitioner had orally transferred the right of administering and maintaining the Temple to and in favour of Sri Santha Swaroopa Ayodhi Anjaneyar Trust, formed under a Trust Deed, registered as Document No.465/Bk IV/2005, dated 11.03.2005 on the file of the Sub-Registrar, Anna Nagar. As a matter of fact, the petitioner is also contemplating to execute and register necessary document in favour of the Temple in respect of the aforesaid property.

4. The specific case of the petitioner is that as early as in the year 1978 (vide Letter bearing No.780/CR/7B/MIS, dated 04.07.1978), the then Assistant Engineer, P.W.D., Cooum River Section, Chennai-9, had written to the Tahsildar, Nungambakkam, Chennai-8, mentioning that the land bearing S.No.70/1, T.S.No.1, Bill No.31 of Aminjikarai Village, is not in dangerous zone. In fact, the property tax in respect of the aforesaid property was assessed by the Corporation of Chennai in the name of the petitioner and till date, the petitioner had been paying the property tax. The Electricity Service Connection in respect of the aforesaid property was in the name of Ananthammal and thereafter, the said Service Connection was transferred in the petitioner's name and till date, she is paying the Electricity consumption charges in respect of the property.

5. It is the further case of the petitioner that she applied for issuance of patta in her name on 10.10.2013 before the Tahsildar, Egmore-Nungambakkam Division and that in the year 2017, the Respondents made an endeavour to evict the petitioner from the property based on the reason that the property forms 'part of Cooum River'. Based on the objection of the petitioner, the Respondents had stalled the threat of eviction. In the month of May 2018, the Respondents once again came to the spot and called upon the petitioner to vacate the property.

6. At this juncture, the Learned counsel for the petitioner submits that the provisions of the Tamil Nadu Land Encroachment Act, 1905, cannot be invoked against the occupants of 'Grama Natham' who owns such Lands as House-sites, especially when the possession of the subject property is with the petitioner's family at least from the year 1964 onwards. In the Settlement Deed, dated 09.10.1964, the property covered under the same was described as situated on the West of Cooum River. Even in the Encumbrance Certificate obtained for the property for the period from 01.01.1987 to 20.06.2017, the description of the property found to exist in the West of Cooum River. If the respondents are permitted to evict the petitioner forcibly from the subject property, she will be put to grave and serious prejudice and

hardship and therefore, left with no other alternative, she has filed the present Writ Petition before this Court for the relief stated supra.

7. Per contra, it is the submission of the learned Special Government Pleader appearing for the respondents 1, 3, 4 and 6 to 10 that the Sub-Inspector of Survey, who inspected the property, had reported that the property referred to by the petitioners is comprised in T.S.No.1, Block No.31 of Aminjikarai Town and the Town Survey Land Record of the property is as under:

Village	Aminjikarai		
Block No.	31		
T.S.No.	1		
Old S.No.	70/5 part		
Classification	Circar Poromboke		
Extent	Hec.	Area	
	Sq.Meters		
	03		78
	57.0		
Adangal			
How the holding is utilised	River		

8. The stand taken by the Respondents is that from the available records in the Office of the Tahsildar, Aminjikarai Taluk, Shenoy Nagar, Chennai-600 030, it is clear that the encroachment made by the petitioner is in Cooum River, as mentioned in the proceedings in Rc.B2/2709/2018, dated 18.09.2018 issued by the Tahsildar, Aminjikarai Taluk, Shenoy Nagar, Chennai-600 030, addressed to the District Collector, Chennai District, Chennai-600 001. Moreover, it is pointed out by the respondents that those who encroached upon the water bodies and other water resources, are not entitled to claim any benefits from the authorities concerned. As a matter of fact, the encroachers on water bodies and water course porambokes, are required to be evicted immediately.

9. Added further, the Learned Special Government Pleader submits before this Court that today, the 'Bio-metric proceedings' are being undertaken by the Authorities concerned in respect of the 'Encroachers' in the 'Cooum River' and an alternative accommodation will be provided to the concerned Encroachers including the petitioner, at Perumbakkam in Sholinganallur, within two weeks from today.

10. In view of the fact that T.S.No.1, Block No.31 of

Aminjikarai Town, which is mentioned in the proceedings of the Tahsildar, Aminjikarai Talulk, dated 18.09.2018 addressed to the District Collector, Chennai, clearly points out that the petitioner and other Encroachers, have encroached upon the 'Cooum River', this Court is of the view that the petitioner is not entitled to seek the relief of Mandamus as sought for by the petitioner from the hands of this Court. As such, the Writ Petition fails.

11. Accordingly, the Writ Petition is dismissed. No costs. Consequently, W.M.P. is closed. However, the Respondents are directed to evict the petitioner by removing the encroachment from the property comprised in S.No.70/13, Block No.31, bearing Old Door No.57, New Door No.105, Kannaiya Street, Aminjikarai, Chennai-600 029, within a period of two weeks from the date of receipt of a copy of this order. The Respondents are also directed to provide an alternative accommodation to the petitioner at Perumbakkam in Sholinganallur, as assured by the Respondents before this Court, within two weeks from the date of eviction.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector, Chennai-600 001.
2. The Commissioner,
Greater Chennai Corporation,
Ripon Buildings, Chennai-3.
3. The Superintending Engineer,
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Kamarajar Salai, Chennai.
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9. The Deputy Commissioner of Police,
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Chennai-600 040.
10. The Inspector of Police,
K.3 Aminjikarai Police Station,
Chennai-29.

+1cc to Mr.D.Rajagopal, Advocate, S.R.No. 77109
+1cc to Mr.A.Nagarajan, Advocate, S.R.No. 77324
+1cc to the Government Pleader, S.R.No. 77990

W.P.No.28584 of 2018

GJII (CO)
GN(16/11/2018)

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