

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.10.2018

CORAM

The Hon'ble Mr.JUSTICE S.VAIDYANATHAN
and
The Hon'ble Mr.JUSTICE KRISHNAN RAMASAMY

W.P.No.27573 of 2018

Lakshmi

.. Petitioner

-vs-

1.The District Collector,
Tiruppur,
Tiruppur District.

2.The Tahsildar,
Uthukuli Taluk,
Tiruppur District.

3.The Land Revenue Inspector,
Uthukuli Taluk,
Tiruppur District.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus calling for the records of the impugned notice under Section 6 of the Tamil Nadu Land Encroachment Act, dated 24.9.2018 on the file of the 2nd respondent and quash the same as illegal and consequently, direct the respondents to consider the petitioner's reply notice dated 3.9.2018 to the show cause notice dated 26.8.2018.

For Petitioner : Mr.K.Nizamuddin

For Respondents: Mr.P.Kathirvelu
Spl. Government Pleader

O R D E R

(Order of the Court was made by S.Vaidyanathan, J.)

Mr.P.Kathirvelu, learned Special Government Pleader accepts notice on behalf of the respondents.

2. This writ petition has been filed by the petitioner seeking a writ of certiorarified mandamus calling for the

records of the impugned notice dated 24.9.2018 issued by the 2nd respondent under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 and quash the same and consequently, direct the respondents to consider the petitioner's reply notice dated 3.9.2018 to the show cause notice dated 26.8.2018.

3. According to the petitioner, she was residing at Survey No.619/16, Old No.2/29A, New No.2/31 of Chinnaripalayam, Sengapalli Village, Uthukuli Taluk, Tiruppur District. Her husband had applied for patta before the respondents vide application dated 6.11.2017 and the same was pending till date. While so, one P.Chinnasamy, who was having grudge over the petitioner, had filed W.P.No.16854 of 2018 by arraying the petitioner as 3rd respondent seeking to remove the encroachment in the public passage bearing S.F.No.619/16 of Sengapalli village, Uthukuli Taluk. By an order dated 6.7.2018, this Court disposed of the writ petition directing the 2nd respondent therein to proceed further under the provisions of Tamil Nadu Land Encroachment Act, 1905 subject to legal interdict if any, and after putting the 3rd respondent therein and other encroachers on notice, shall take action in accordance with law for the removal of the encroachment and the said exercise was to be carried out within a period of ten weeks from the date of receipt of a copy of the order and necessary communication shall be sent to the petitioner and 3rd respondent therein as well as to the person/s concerned/encroachers, if any.

4. According to the petitioner, pursuant to the order passed by this Court in W.P.No.16854 of 2018, the 3rd respondent issued a show cause notice dated 26.8.2018 (received by the petitioner on 28.8.2018) to the petitioner claiming that Survey No.619/16 is road and the petitioner was encroaching on it. On 3.9.2018, the petitioner had submitted her reply along with supporting documents to the 1st respondent by marking copy to the respondents 2 and 3, which was duly received by them. While things stood thus, all of a sudden on 24.9.2018, the 2nd respondent served notice under Section 6 of the Tamil Nadu Land Encroachment Act on the petitioner and threatened to evict the petitioner from the subject property. According to the petitioner, the above act and conduct of the respondent authorities is against the provisions of the Tamil Nadu Land Encroachment Act and also against the principles of natural justice.

5. The main contention of the petitioner is that the 2nd respondent has issued the impugned notice without considering the objection/reply dated 3.9.2018 submitted by the petitioner to the show cause notice issued to her.

6. Admittedly, the petitioner has not been heard before issuing the impugned notice under Section 6 of the Tamil Nadu

Land Encroachment Act even though, the petitioner had submitted her reply to the show cause notice dated 26.8.2018.

7. In W.P.No.1933 of 2018, dated 01.02.2018 (Jayalakshmi v. The Special Officer/Block Development Officer (Village Panchayat), Kandamangalam Panchayat Union, Villupuram District), a Division Bench of this Court, in which one of us (S.Vaidyanathan,J) was a member, held as under:

"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 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 4 of Tamil Nadu and Encroachment Act, 1905 are challenged on the ground that without considering the Petitioner's representation, on receipt of notice under Section 7 of Tamil Nadu 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 Tamil Nadu 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."

8. In the case on hand, the impugned notice dated 24.9.2018 under Section 6 of the Tamil Nadu Land Encroachment Act was issued by the 2nd respondent to the petitioner without considering the reply/objection dated 3.9.2018 submitted by her and as such, this Court left with no other option except to interfere with the impugned notice. It is open to the authorities to inspect the place after informing the parties. If the parties fail to be present, based on records, coercive action can be taken. If there is encroachment, till final orders are passed, there shall be disconnection of electricity and the petitioner will have no right to seek for electricity restoration. One of us, while singly dealing with the similar case of removal of encroachment in the case of P.Ramachandran vs. State of Tamil Nadu and others [W.P.(MD) No.34627 of 2004] decided on 04.08.2017, had referred to various decisions of the Hon'ble Division Bench of this Court and the guidelines stipulated therein and had passed a detailed order and the said order has to be followed in letter and spirit, wherever it is applicable.

9. In the light of the above, the writ petition is allowed and the impugned notice dated 24.9.2018 issued under Section 6 of the Tamil Nadu Land Encroachment Act is set aside and the 2nd respondent is directed to consider the reply/objection submitted by the petitioner and pass a reasoned order on merits and in

accordance with law, within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, W.M.P.No.32101 of 2018 is closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

bbr/mp

To

1.The District Collector,
Tiruppur,
Tiruppur District.

2.The Tahsildar,
Uthukuli Taluk,
Tiruppur District.

3.The Land Revenue Inspector,
Uthukuli Taluk,
Tiruppur District.

+1 CC to Mr.I. Abdul Bashith, Advocate sr 71537.

+1 CC to Govt. Pleader sr 71613.

W.P.No.27573 of 2018

SP(15/11/2018)

सत्यमेव जयते

WEB COPY