IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:20.11.2018

Coram

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

W.P.No.30502 of 2018
and
W.M.P.No.35565 of 2018

P.Dhamayanthi .. Petitioner

Vs.

1.The District Collector,
Collectorate of Tirupur,
Tirupur District – 641 604.

2.The Tahsildar,
Palladam Taluk,
Tirupur District – 641 601.

3.The Executive Officer,
Samalapuram Town Panchayat,
Tirupur District – 641 663. ..Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records relating to the 3rd Respondent's notice bearing Na.Ka.No.409/2017 dated 29.10.2018 directing the removal of the petitioner's house at No.24-A/52, Pallapalayam Church Street, Palladam Taluk, Tirupur District, situated in the Survey No.468/A1 of Samalapuram Village and threatening coercive action, and to quash the same, and consequently forbear the respondents from taking any coercive action in the respect of the said property pending the final determination of the survey disputes as provided in the Tamil Nadu Survey and Boundaries Act, 1923.

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For Petitioner : Mr.S.Anil Sandeep

For RR 1 and 2 : Mr.J.Pothiraj
Special Government Pleader

For 3rd Respondent : Mr.K.Ravikumar
Additional Govt. Pleader

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O R D E R

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

Heard the Learned Counsel for the Petitioner, Mr.J.Pothiraj, Learned Special Government Pleader for Respondents 1 & 2 and Mr.K.Ravikumar, Learned Additional Government Pleader for the 3rd Respondent.

2.No counter affidavit is filed on behalf of the Respondents 1 to 3.

3.According to the Petitioner, she and her family are residing at Door No.24-A/52, Pallapalayam Church Street, Palladam Taluk, Tirupur District in Natham Survey No.468/A1, Samalapuram Village, for more than 33 years. In fact, the property was purchased jointly in the names of her husband – Palanisamy (late) and his brothers Ganesan (late) and Ramaraj, by means of registered sale deed dated 04.12.1984 on the file of the Sub Registrar Office, Sulur. She along with her family members are in possession of the property in the present form for all these years without any hindrance, let or dispute whatsoever. Indeed, the electricity service connection in respect of their house stands in her husband's name and she is also paying the property tax which stands in her husband's name.

4.The stand of the Petitioner is that she came to know through an intimation issued by the Palladam Taluk Office as regards a survey in the Pallapalayam Church Street, where a residence is situated. The survey was conducted by the 2nd Respondent/Tahsildar, Palladam Taluk, Tirupur District on 14.09.2018. She was not made known about the outcome and result of the survey. However, to her shock and dismay, she received a sudden notice dated 14.09.2018 through registered post from the 3rd Respondent/Executive Officer, Samalapuram Town Panchayat, Tirupur District that her house is an encroachment which requires to be removed within 15 days from the date of receipt of that notice. Till date, she is not served with the notice of the decision and the outcome of the survey conducted by the 2nd Respondent. In the event of notice being served on her, the Petitioner has a right of Appeal as per the Tamil Nadu Survey and Boundaries Act, 1923 and she has a right to approach a Civil Court for ultimate determination of issues pertaining to the disputed survey and boundaries.

5.At this stage, the Learned Counsel for the Petitioner submits that the Petitioner had addressed a representation dated 24.09.2018 to the authorities concerned (including all the Respondents) to have a relook into the matter. However, the impugned notice dated 29.10.2018 was issued by the 3rd Respondent

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which was served on her [through registered post] requiring her to remove her house in Survey No.468/A1, Samalapuram Village, Pallapalayam Church Street within seven days from the date of receipt of the notice etc.

6.The Learned Counsel for the Petitioner comes out with an argument that in the impugned notice dated 29.10.2018, no extent or details were furnished and the said communication is in negation of the Principles of the Natural Justice.

7.In this connection, the Learned Counsel for the Petitioner emphatically points out that the Petitioner is the owner and occupier of the property in question which she had purchased and in fact, the Tamil Nadu Survey and Boundaries Act, 1923 provides for redressal of her grievance against any disputed survey, that too only after the results of the survey map thereon are made known to her by the Surveying Authority i.e. the 2nd Respondent herein. As such, there is no room for the 3rd Respondent/Executive Officer to brand her house as an encroachment and there is no scope for such an action except for the survey.

8.Yet another contention advanced on behalf of the Petitioner is that the 3rd Respondent/Executive Officer has exceeded his jurisdiction and has exercised his jurisdiction in an irregular and illegal manner, besides acted in great haste, which has resulted in issuance of impugned notice dated 29.10.2018 which is legally unsustainable.

9.At this juncture, the Learned Counsel for the Petitioner brings it to the notice of this Court that the Petitioner on 05.11.2018 through her Advocate had issued a detailed reply to the 3rd Respondent's notice dated 29.10.2018 wherein the stand of the Petitioner was brought to the notice of the authority.

10.A cursory perusal of the Petitioner's Advocate notice dated 05.11.2018, among other things, indicates that the survey is disputed by the Petitioner and a specific case is that no enquiry in the subject matter was conducted and she and her family members are in ownership and possession of the property for well over three decades and they are protected by the right of possession and prescription etc. Ultimately, in the said Advocate's Reply Notice dated 05.11.2018 addressed to the Respondents, it was mentioned that the details and results of survey are to be made known to the Petitioner, so as to enable her to approach an Appellate Authority or the Competent Civil Court if need be, for final determination of the issues relating to her boundaries.

11.The Learned Counsel for the Petitioner fairly submits

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that after the issuance of the Petitioner's Advocate's Notice dated 05.11.2018 addressed to the Respondents, no action has been taken by the concerned authorities.

12.It is to be remembered that all streets maintained by the Municipality shall be open to all individuals irrespective of caste and creed. Also that, the 'Road Margins' vest with the Municipality. Further, the 'Street' vests in Municipality. In respect of an encroachment into a Municipal property, the Encroacher cannot be removed without prior notice and also following the procedure specified under Chapter IX of the Act.

13.It is to be pointed out that the ambit of the Tamil Nadu Survey and Boundaries Act, 1923, is to conduct survey of lands and settlement of 'Boundary Disputes. Section 9 of the Act speaks of the Power of Survey Officer to decide and record an 'undisputed Boundary'. In reality, a notice ought to be given to the Land Holders, whose boundaries are likely to be affected by the determination. A Survey Officer is required to record evidence before arriving at a conclusion as per Section 10 of the Act. If an order of Survey Officer is not reviewed by an Appellate Authority or assailed as mentioned in Section 11 of the Act, then, the same will be a final one. Moreover, the 'Bar' imposed by Section 14 of the Act will apply to the correctness of Boundaries and not to the issue of title.

14.Be it noted that a Second Appeal will lie to the Concerned Authority as per Section 12 of the Act, 1923 as against the order passed by the First Appellate Authority. Section 12 B 'Revision' of the Act refers to the Director of Survey and Settlement, who may, on his own motion, call for and examine an order passed or proceeding recorded, under Section 11 or 12A to satisfy himself as to the regularity of such proceedings or the correctness, legality or propriety of any decision or order passed thereon etc.

15.It cannot be gainsaid that the Survey Officer in making decision acts as a 'Statutory Officer' prescribed under the Tamil Nadu Survey and Boundaries Act, 1923.

16.At this stage, this Court makes a pertinent mention that when the 3rd Respondent had issued impugned notice dated 29.10.2018 to the Petitioner and when the Petitioner, through her Advocate, had submitted a detailed reply on 05.11.2018 setting out necessary facts in a qualitative and quantitative details, pointing out about the plea of 3rd Respondent exceeding his jurisdiction in the matter and acted in great haste and also complained of the survey not being conducted etc., this Court is of the earnest opinion that it is incumbent on the part of the concerned authorities to look into the tenor and spirit of the contents of the reply dated 05.11.2018 of the Petitioner's

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Advocate's Notice and to act upon it in a fair and diligent manner. In the instant case, such a recourse has not been resorted to by any of the Respondents to the present Writ Petition. As such, this Court is left with no option, but to direct the Respondents 2 and 3 to take into consideration of the Petitioner's Lawyer's Notice dated 05.11.2018 and to take necessary action for the conduct of survey, if not already done and to furnish a copy of the Survey Report to the Petitioner and in case, if the Respondents 1 and 2 come to a conclusion that the Petitioner requires to be provided with an adequate opportunity to put forth her grievances, then, the Respondents 1 and 2 shall provide an adequate opportunity to the Petitioner, after issuing notice to the Petitioner mentioning the place, time and date for an enquiry and to take a final decision in the subject matter within a period of six weeks from the date of receipt of copy of this order. In the meanwhile, it is open to the Petitioner to submit necessary documents at her command to prove her title, possession and other revenue records/receipts before the authorities concerned and at the time of passing the final order, they are to advert to the factual and legal pleas raised by the Petitioner in a complete and comprehensive way. The said order shall be passed by the authorities concerned in an unbiased and free manner and that too in a dispassionate manner by not keeping in mind any of the observations made by this Court in this Writ Petition. If any oral/personal hearing is sought for by the Petitioner, then, the concerned authorities shall provide the same to the Petitioner without any hesitation or haziness whatsoever. Till final orders are passed by the authorities concerned, the Petitioner shall not be disturbed/displaced from the subject property by any one.

17.With the aforesaid observations and directions, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

Sgl
To

1.The District Collector,
Collectorate of Tirupur,
Tirupur District - 641 604.

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2.The Tahsildar,
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Tirupur District - 641 601.

3.The Executive Officer,
Samalapuram Town Panchayat,
Tirupur District - 641 663.

4.The Government Advocate,
High Court, Madras.

+1cc to Mr.K.Ravi Kumar, Advocate SR.No.79302
+2cc to Mr.S.Anil Sandeep, Advocate SR.No.79318
+1cc to Government Pleader SR.No.79541
+2cc to Mr.S.Anil Sandeep, Advocate SR.No.79320(08/01/2019)

W.P.No.30502 of 2018

NMI(CO)
GMY(07/12/2018)

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