



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 13.03.2018

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MRS.JUSTICE R.THARANI

W.P. (MD) .Nos.2178 of 2018 and 5328 of 2017
and W.M.P. (MD) .Nos.2430 and 2431 of 2018

W.P. (MD) .No.2178 of 2018:

A.Innasiammal

... Petitioner

Vs.

1. The Tahsildar,
Vilathikulam Taluk,
Vilathikulam, Tuticorin District.

2. The Head Quarters Deputy Tahsildar,
Vilathikulam Taluk,
Vilathikulam,
Tuticorin District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records pertaining to the impugned notice issued by the 1st respondent dated 11.01.2018 and quash the same as illegal.

W.P. (MD) .No.5328 of 2017:

A.Innasiammal

... Petitioner

Vs.

1. The District Collector,
Tuticorin District,
Tuticorin.

2. The Tahsildar,
Vilathikulam Taluk,
Vilathikulam,
Tuticorin District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 2nd respondent to consider the petitioner's representation dated 08.03.2017 and consequently, direct the 2nd respondent to issue patta in the petitioner's name to the extent of 11 acres out of total extent of 25 acres and 43 cents bearing Survey No.84/3B in Sivaparangundram Village, Tuticorin District.



For Petitioner
in both cases : Mr.C.M.Arumugam

For Respondents : Mr.D.Muruganantham
in both cases Additional Government Pleader

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COMMON ORDER

[Order of the Court was delivered by T.S.SIVAGNANAM, J.]

Hear Mr.C.M.Arumugam, learned counsel appearing for the petitioner and Mr.D.Muruganantham, learned Additional Government Pleader appearing for the respondents.

2.Writ petition in W.P.(MD).No.2178 of 2018 has been filed by the petitioner challenging the order passed under Section 6 of the Tamil Nadu Land Encroachment Act, 1905, dated 11.01.2018 and in W.P. (MD).No.5328 of 2017 the petitioner seeks for a direction to issue patta to the petitioner. When the writ petitions came up before this Court on 02.02.2018, this Court took note of the submission made by the petitioner that she has not encroached any Government property and enjoying only her property. Therefore, this Court by an order dated 02.02.2018, directed measurement to be taken, after taking note of the title deeds as well as the revenue records passed an order, which reads as follows:

"The petitioner would contend that she is the owner of the land measuring about 10.20.5 hectares comprised in Survey No.84/3B located in Sivaperunkundram Village, Vilathikulam Taluk, Thoothukudi District. However, the respondents gave notice as if the petitioner has encroached upon the Survey No.94/1 in Sivaperunkundram Village, which is a Oodai poromboke, measuring an extent of 28.60.0 hectares.

2.According to the petitioner, she has not made any encroachment and she is only enjoying her own property. Therefore, to ascertain the extent of the property and also to know whether the petitioner is actually in possession of her property alone or whether she has encroached upon Survey No.94/1, a detailed Survey is necessary. Therefore, Tahsildar, Vilathikulam Taluk, Thoothukudi District, first respondent herein is directed to depute the Taluk Surveyor to survey both the properties viz., petitioner's property comprised in Survey No.84/3b to an extent of 10.20.5 hectares and the property which is alleged to be encroached upon by the petitioner comprised in Survey No.94/1, to an extent of 28.60.0 hectares. Both the properties have to be surveyed and measured in the presence of the petitioner. The said measurements have to be



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taken, taking note of the title deed as well as the revenue records of both properties and also the surveyor has to state whether the petitioner has encroached upon the Oodai poromboke comprised in Survey No.94/1 or not. The said exercise shall be completed on or before 15.02.2018.

3.Till the survey is conducted, there shall be an order of status-quo as on today.

4.Call the writ petition on 16.02.2018 along with W.P.No.5328 of 2017."

3.Subsequently, the writ petitions were heard on 16.02.2018, wherein it was contended by the learned counsel for the petitioner that the survey was not conducted in the presence of the petitioner and the survey, which has been referred to was not done after the order was passed by this Court, to avoid any controversy in the matter, we passed the following order on 16.02.2018,

"The Court vide order dated 02.02.2018 directed the survey to be conducted of the property in question, as there is an allegation that the petitioner has enclosed large extent of land which is classified as "Oodai Poromboke". A direction was specific, that is, the petitioner should be put on notice, his title deed should be seen as well as the revenue records and after survey, the surveyor has to state as to whether the petitioner has encroached or not. The officers who are present today would state that the survey was conducted in the presence of the petitioner. This is seriously disputed by the learned counsel for the petitioner and it is submitted that the survey which was referred to 25.10.2017, was not done after the order passed by this Court. We do not wish to dwell on this controversy any further. We direct that fresh survey be conducted after issuing notice to the petitioner. The petitioner shall produce copies of the parent document, sale deed, copy of the patta, chitta and any other document in support of the claim that there is no encroachment. In the presence of the petitioner, the property has to be surveyed using modern equipments and a report clearly indicating the areas surveyed be submitted before the Court. The survey shall be conducted on 26.02.2018. Needless to state as per the earlier direction, the petitioner's patta lands also needs to be surveyed to ascertain the correct facts and submits a report along with sketch. The cost of survey shall be borne by the petitioner.

List on 09.03.2018."

<https://hcservices.courts.gov.in/hcservices/> 4. Pursuant to the above direction, survey has been conducted and it is stated that the petitioner is an encroacher of the Government land.



5. The learned Additional Government Pleader submitted that the petitioner has also given a representation to grant patta in respect of the said land.

6. Since the impugned order under Section 6 of the Land Encroachment Act, 1905 has been passed without affording an opportunity to the petitioner and without having the benefit of the survey report, we are inclined to set aside the impugned order, dated 11.01.2018. Accordingly, this writ petition is allowed and the impugned order dated 11.01.2018 is set aside and the petitioner is directed to give their objections, based on the survey report, which was conducted pursuant to the order dated 16.02.2018, within a period of 15 days from the date of receipt of a copy of this order. After the reply/objection is received, the first respondent shall consider the same and pass a speaking order on merits and in accordance with law after affording an opportunity of personal hearing. No costs. Consequently, the connected miscellaneous petitions are closed.

7. In the light of the direction issued in W.P.(MD).No.2178 of 2018, the prayer sought for by the petitioner for grant of patta, cannot be considered, at this stage and therefore, we close the writ petition in WP(MD)No.5328 of 2017 giving liberty to the petitioner to agitate the matter as and when required. No costs.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
Tuticorin District, Tuticorin.
2. The Tahsildar,
Vilathikulam Taluk,
Vilathikulam,
Tuticorin District.
3. The Head Quarters Deputy Tahsildar,
Vilathikulam Taluk,
Vilathikulam, Tuticorin District.

+ 1 CC TO Mr.C.M.ARUMUGAM, ADVOCATE IN SR No. 54953

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 55151

NS

TE/KK/SAR-2 : 28/03/2018 : 4P/6C