



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 05.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.P (MD) No.2379 of 2018

and

W.M.P (MD) No.2594 of 2018

R.Komathi

... Petitioner

Vs.

1. The District Collector,
Ramanathapuram District,
Ramanathapuram.

2. The Revenue Divisional Officer,
Ramanathapuram,
Ramanathapuram District.

3. The Tahsildar,
Taluk Office,
Ramanathapuram,
Ramanathapuram District.

4. The Commissioner,
Mandapam Union,
Ramanathapuram District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, to call for the records pertaining to the impugned order passed by the third respondent vide his proceedings in Na.Ka.P9/11917/2017, dated 30.01.2018 and quash the same as illegal.

For Petitioner

: Mr.G.Thalaimutharasu
for Mr.R.M.Makesh Kumaravel

For Respondents

: Mr.S.Dhayalan
Government Advocate

ORDER

(Order of the Court was made by **M. SATHYANARAYANAN, J.**)

By consent, the Writ Petition itself is taken up for final disposal.

<https://hcservices.ecourts.gov.in/hcservices/>

2.Mr.S.Dhayalan, learned Government Advocate, accepts notice on behalf of the respondents.



3. It is the claim of the petitioner that she had purchased 1750 square feet of land along with superstructures in Survey No.388/1, Pattinamkathan Village, through a registered sale deed, dated 29.10.2003 and also purchased 2177.12 square feet of land in the very same survey number through another sale deed, dated 29.01.2009 and claims to be in possession and enjoyment of the superstructure along with the sale deeds. The petitioner would further aver that on an earlier occasion, she had filed a Writ Petition in W.P(MD)No.19064 of 2016 praying for issuance of a Writ of Mandamus, directing the respondents therein to take appropriate action on her representation, dated 26.08.2016 and to cancel the gift deed bearing Document No.1265 of 2015, dated 13.03.2015 and the same is pending. One Rajeswari had also filed W.P(MD)No.15349 of 2016 against the respondents 1 to 3 herein praying for appropriate direction, directing the third respondent to remove the encroachments made in the road situated in Survey No.338/13A, Pattinamkathan Village, Ramanathapuram District in the light of the proceedings in O.Mu.(A8)/2410/2016, dated 03.06.2016 and the same was disposed of on 08.08.2017 by directing the third respondent to enquire into the matter by issuing notice to the interested parties by following due process of law within the stipulated time. Similarly, one K.M.Kamatchi had also filed W.P (MD)No.1712 of 2017 praying for the similar relief as that of the prayer in W.P(MD)No.15349 of 2016, wherein an Advocate Commissioner was also appointed and he has also submitted his report, dated 04.06.2017 stating among other things that there is an encroachment such as grill gate and shed made by the private respondents 4 and 5 therein in Survey No.388/13A, which is classified as a pathway, as per the revenue records and measurements made with the help of the Taluk Surveyor.

4. The grievance now expressed by the petitioner is that though through valid sale deeds she had purchased the lands in question along with superstructure and she is in possession and enjoyment of the same, she has been issued with notices under Sections 7 and 6 of the Tamil Nadu Land Encroachment Act, 1905 (hereinafter referred to as 'the Act') by the third respondent and in respect of the notice issued under Section 7 of the Act, she has also submitted her detailed response to the third respondent on 17.01.2018 and without taking cognizance of the same, notice under Section 6 of the Act came to be issued by the very same respondent and hence, she is constrained to approach this Court by filing this Writ Petition.

5. The learned counsel appearing for the petitioner has drawn the attention of this Court to the typed set of documents and would submit that the third respondent in all fairness ought to have considered the detailed response submitted by the petitioner, dated 17.01.2018 to the notice issued under Section 7 of the Act, dated 10.01.2018 and without applying the mind to the



relevant facts and circumstances has erroneously issued notice under Section 6 of the Act, dated 30.01.2018 and hence, prays for interference.

6. Per contra, the learned Government Advocate appearing for the respondents would submit that the petitioner has encroached upon the public pathway and put up a superstructure and in compliance of the order, dated 12.07.2017 made in W.P(MD)No.1712 of 2017, action is being taken strictly in accordance with law.

7. This Court has considered the rival submissions and perused the materials placed on record.

8. It is relevant to extract Section 10 and 10(B) of the Tamil Nadu Land Encroachment Act, 1905:-

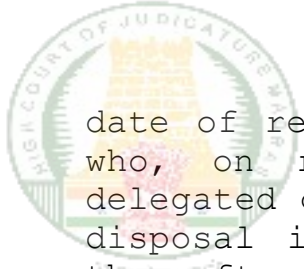
"10. Appeal.- An appeal shall lie (a) to the Collector from any decision or order passed by a Tahsildar or Deputy Tahsildar under this Act, and to such officer as may be specified by the State Government in this behalf (hereinafter referred to as the appellate authority) from any decision or order passed by an authorised officer under this Act and different appellate authorities may be specified for different classes of cases; and

(b) to the District Collector from any decision or order of a Collector passed otherwise than on appeal, and

(c) to the [Commissioner of Land Administration] from any decision or order of a District Collector passed otherwise than on appeal.

10-B. Stay pending decision in appeal or revision.- Pending the disposal of any appeal or application or proceedings for revision under this Act, the Collector, the District Collector, the Appellate Authority the [Commissioner of Land Administration] or the State Government, as the case may be, may by order, and subject to such conditions as may be specified therein, stay the execution of the decision or order appealed against or sought to be revised."

9. This Court, taking into consideration the above facts and circumstances and without going into the merits of the claim projected by the petitioner, is of the view that the Writ Petition itself is not maintainable for the reason that the petitioner is having an effective alternate appeal remedy under the above said provisions of the Act. Hence, the petitioner is at liberty to file an appeal under Section 10 of the Act against the notice, dated 30.01.2018 issued under Section 6 of the Act by enclosing relevant and authenticated documents along with the petition for stay under Section 10(B) of the Act within a period of three weeks from the



date of receipt of a copy of this order to the first respondent, who, on receipt of the same either himself or through the delegated official, shall take up the petition for stay and give a disposal in accordance with law within a period of three weeks thereafter and the said official is at liberty to take up the main appeal and give a disposal on merits within a period of six weeks from the date of disposal of the stay application. It is made clear that till the disposal of the petition for stay by the Appellate Authority or the delegate official, the third respondent shall defer further action in terms of the notice issued under Section 6 of the Act, dated 30.01.2018. It is also made clear that the petitioner till the disposal of the Appeal, shall not create any third party rights in respect of the land and superstructure in question.

10.The Writ Petition stands disposed of accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
Ramanathapuram District,
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Ramanathapuram District.
4. The Commissioner,
Mandapam Union,
Ramanathapuram District.

+1cc to Mr.R.M.Makesh Kumaravel, Advocate Sr.No.46255

+1cc to The Spl.Government Pleader Sr.No.46898

PS/MR

VB/SV/MMS/SAR2/13.02.2018/4P/7C

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