



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.02.2018

CORAM:

THE HONOURABLE Mr.JUSTICE N.KIRUBAKARAN

AND

THE HONOURABLE Mrs.JUSTICE R.THARANI

W.P. (MD) .No.2578 of 2018

and

W.M.P. (MD) No.2774 of 2018

Elizabeth Baskar

... Petitioner

Vs.

1.The District Collector,
Collectorate Campus,
Kanyakumari District,
Nagercoil.

2.The Tahsildar,
Tahsildar Office,
Agasteeswaram Taluk,
Kanyakumari District.

3.The Zonal Deputy Tahsildar,
Agasteeswaram Taluk,
Nagercoil,
Kanyakumari District.

... Respondents

PRAYER:This petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the first respondent herein to entertain the petitioner's Statutory Appeal filed under Section 10 of the Tamil Nadu Land Encroachment Act, 1905 along with petition under Section 11(4) of Tamil Nadu Land Encroachment Act, 1905 and dispose the same within the time stipulated by this Court.

For Petitioner

: Mr.R.Murugan

For Respondent Nos.1 & 3

: Mr.S.Dhayalan
Government Advocate

O R D E R

(Order of this Court was made by N.KIRUBAKARAN, J)

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By consent , the writ petition is taken up for final disposal at the stage of admission itself.

2.The petitioner is said to have encroached upon a piece of land comprised in Survey No.715/1E1 to an extent of 33.333 cents in Shree Nagar, Elanthaiyadi, Kaniyankulam Village, Agasteeswaram Taluk, Kanyakumari District. Though the petitioner has initially got 'B memo' with regard to the said property, the same was cancelled by the Tahsildar. The said order was challenged before this Court and this Court has remanded the matter for fresh consideration by the Tahsildar, after issuing notice to the petitioner and even thereafter, the same order was passed by the Tahsildar, Agatheeswaram Taluk.

3.Be that as it may, the Tahsildar passed an eviction order under Section 6 of the Tamil Nadu Land Encroachment Act, 1905. The said order has been challenged by way of an appeal under Section 10 of the Tamil Nadu Land Encroachment Act, 1905, before the first respondent, District Collector and the said appeal is said to have been filed on 25.01.2018 along with the condone delay petition, since there was a delay in filing of the appeal. Even before the petitioner getting any favourable order, the Tahsildar is trying to take possession. Therefore, the petitioner has come before this court by way of this writ petition seeking Mandamus to the first respondent to entertain the petitioner's Statutory Appeal and to dispose of it.

4.Heard Mr. R.Murugan, learned Counsel appearing for the petitioner and Mr.S.Dhayalan, learned Government Advocate appearing for the respondents.

5.There is no dispute with regard to the eviction order passed by the third respondent Tahsildar. There is an appeal under Section 10 of the Tamil Nadu Land Encroachment Act, 1905. Though within 30 days the appeal has to be filed, the petitioner approached the first respondent with a delay of 60 days. Therefore, the petitioner could not get the appeal numbered and get an interim order. Since the petitioner is following the due process of law, 60 days delay should not stand in the way of the first respondent in entertaining the appeal. Therefore, under Article 226, this Court condones the delay of 60 days and allows the condone delay petition filed by the petitioner before the first respondent. Further, this Court directs the first respondent to entertain the appeal and dispose of the appeal within a period of eight weeks from the date of service of this order. Till the appeal is disposed of and the copy of the order is served upon the petitioner, no coercive steps shall be taken by the respondents.



6. With the above direction, this writ petition is disposed of. No Costs. Consequently, the connected miscellaneous petition is closed.

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/True Copy/

Sd/-

Assistant Registrar (P&A)

Sub-Assistant Registrar

To

1. The District Collector,
Collectorate Campus,
Kanyakumari District,
Nagercoil.

2. The Tahsildar,
Tahsildar Office,
Agasteeswaram Taluk,
Kanyakumari District.

3. The Zonal Deputy Tahsildar,
Agasteeswaram Taluk,
Nagercoil,
Kanyakumari District.

+One cc to The Special Government Pleader, SR.No.47447

+One cc to M/s.R.Murugan, Advocate, SR.No.47182

mrn/ns

RL/6C/3P/SV/MMS/SAR1/22/3/2018

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