



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.P (MD) No.6797 of 2018
and
W.M.P (MD) No.6507 of 2018

Annalakshmi

.. Petitioner

Vs.

The Revenue Inspector,
Pannikundu Firka,
Thirumangalam Taluk Office,
Thirumangalam,
Madurai District.

.. Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, to call for the records of the impugned order passed by the Respondent, dated 11.03.2018 and quash the same as illegal.

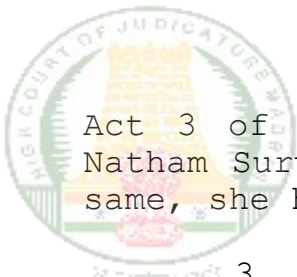
For Petitioner	: Mr.M.Kannan
For Respondent	: Mr.A.Muthukaruppan, Additional Government Pleader

ORDER

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

The petitioner claims that her husband purchased the Natham property admeasuring to an extent of 450 sq. ft., comprised in Survey No.248/13(Old Survey No.408/3), at Veerapatti, Mathippanur Village, Thirumangalam Taluk, Madurai District, through a registered sale deed dated 20.02.1978, bearing Document No.167 of 1978 and also claims that her husband purchased yet another Natham property in Survey No.248/14(Old Survey No.227/1) in the very same place, through yet another registered sale deed, bearing Document No.1220 of 1997, dated 13.10.1997.

2. It is also the claim of the petitioner that she has also put up a superstructure having area of 400 sq. ft., in the said land and it was also subjected to statutory levies and to the shock and surprise, the respondent has issued the impugned notice under Section 5 of the Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu



Act 3 of 1905), alleging encroachment, in front of her house in Natham Survey Nos.148/13 and 14 and challenging the legality of the same, she has filed the present writ petition.

3. The learned counsel appearing for the petitioner would submit that the impugned notice is not consonance with the provisions of the Tamil Nadu Land Encroachment Act, 1905 and the Revenue Inspector is lack of jurisdiction to issue such a notice and would further add that since the principles of natural justice has also been violated in toto, prays for interference.

4. Per contra, Mr.A.Muthukaruppan, learned Additional Government Pleader, who accepted notice on behalf of the respondent, would submit that in the light of the effective alternate remedy in the form of appeal under Section 10 of the Tamil Nadu Land Encroachment Act, 1905, the Writ Petition is not maintainable.

5. This Court has heard the rival submissions and perused the materials placed before it.

6. It is relevant to extract Sections 10 and 10-B of the Tamil Nadu Land Encroachment Act, 1905 as under:

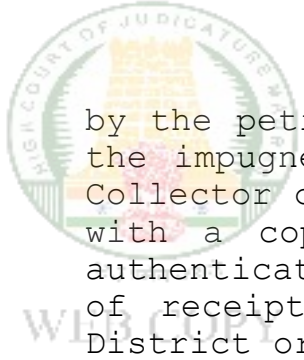
10.Appeal- An appeal shall lie (a) to the Collector from any decision or order passed by a Tahsildar or Deputy Tahsildar under this Act, and to such officer as may be specified by the State Government in this behalf (herein after referred to as the appellate authority) from any decision or order passed 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.

7. THIS Court in the light of the above facts and circumstances, without going into the merits of the claim projected



by the petitioner, permits the petitioner to file an appeal against the impugned notice of the respondent dated 11.03.2018, before the Collector of Madurai District, along with a petition for stay, along with a copy of this order and also enclosing the relevant and authenticated documents, within a period of four weeks from the date of receipt of a copy of this order. The Collector of Madurai District or the delegated Authority, on receipt of such appeal along with stay petition, may entertain the same, if the papers are otherwise in order, without putting the issue of limitation, shall take up the petition for stay initially and give a disposal, within a period of four weeks from the date of entertainment of appeal and till such time, further proceedings in pursuant to the impugned notice remains stayed and the appellate authority is also at liberty to take up the main appeal itself and give a disposal, on merits and in accordance with law, within a period of twelve weeks from the date of entertainment of appeal and communicate the decision taken, to the petitioner. It is also made clear that the petitioner till the disposal of the appeal by the appellate authority, shall not create any third party right in respect of the land in question and shall not alienate or alter the physical features also.

8. This Writ Petition stands disposed of accordingly. No costs.

Sd/-

Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1. The Revenue Inspector,
Pannikundu Firka,
Thirumangalam Taluk Office,
Thirumangalam,
Madurai District.

2. The District Collector,
Madurai.

+1CC TO SPECIAL GOVERNMENT PLEADER, SR NO.59328
+1CC TO M/S.M.KANNAN, ADVOCATE, SR NO.59364

ORDER MADE IN
W.P(MD)No.6797 of 2018
28.03.2018

pm

MS/JC/SAR-1/12.04.2018/3P.5C