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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 30.11.2018

DELIVERED ON : 06.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS.JUSTICE R.THARANI

W.P (MD) No.21637 of 2018
and
W.M.P (MD) No.19542 of 2018

M.Natchal

... Petitioner

Vs.

1.The District Collector,
Sivagangai District,
Sivagangai.

2.The District Revenue Officer,
Office of the District Collectorate,
Sivagangai,
Sivagangai District.

3.The Revenue Divisional Officer,
Office of the Revenue Divisional Officer,
Sivagangai,
Sivagangai District.

4.The Tahsildar,
Tirupuvanam,
Sivagangai District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Mandamus to direct the respondents not to evict the petitioner from the petitioner's land comprised in Natham Survey Nos.373/8 and 373/12 situated at Poovanthi Village, Tirupuvanam Taluk, Sivagangai District.

For Petitioner : Mr.V.Angusamy

For Respondents : Mr.M.Jeyakumar
Additional Government Pleader
for R.1 to R.4

* * * * *

ORDER

R.SUBBIAH, J.

This writ petition has been filed seeking a writ of Mandamus to direct the respondents not to evict the petitioner from the petitioner's land comprised in Natham Survey Nos.373/8 and 373/12



situated at Poovanthi Village, Tirupuvanam Taluk, Sivagangai District.

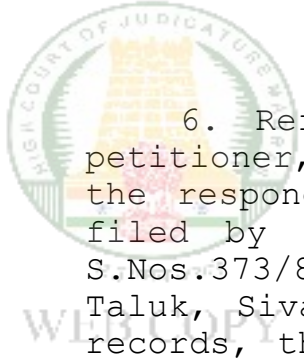
2. By consent, the writ petition has been taken up for final disposal.

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3. According to the learned Counsel for the petitioner, the land in Natham Survey Nos.373/8 and 373/12 at Poovanthi village, Tirupuvanam Taluk, Sivagangai District, measuring an extent of 28 cents, originally belonged to one Malaiyandi, the father-in-law of the petitioner. After the demise of the said Malaiyandi, his sons, namely, Mookan, Meenakshi Ambalam - husband of the petitioner, Poojai, Thakkapuli and Palaniandi inherited the same. The husband of the petitioner - Meenakshi Ambalam died during 1960 leaving behind her and two daughters, namely, Palaniammal and Rajeswari. The petitioner and her daughters along with the other brothers of the deceased Meenakshi Ambalam, who were in joint possession and enjoyment of the aforesaid property, had entered into a partition on 16.01.1996, pursuant to which, the land in Natham Survey No.373/8 had been divided into four equal shares, viz., northern end was allotted to Mookkan; next portion was allotted to the petitioner; southern side was allotted to Thakkapuli and the remaining portion at southern end was allotted to Palaniandi.

4. He further submitted that the petitioner purchased the land from Poojai Vagaiyara which was allotted to them outside the partition. Subsequently, the elder daughter of the petitioner, namely, Palaniammal purchased the land situated at southern and northern portions from Mookkan and Thakkapuli Vagaiyara and thereafter, she relinquished the same to the petitioner. Now, the petitioner and her elder daughter - Palaniammal were in possession and enjoyment of the total extent of 14.05 cents of land in Natham Survey No.373/8. While so, the fourth respondent tried to trespass into the property of the petitioner stating that they proposed to construct a Panchayat Office therein. The petitioner resisted such a proposal and the officials left the property of the petitioner. Hence, the petitioner filed a civil suit in O.S.No.44 of 2018 on the file of the Sub Court, Sivagangai, seeking declaration and permanent injunction against the respondents 1 and 4 and they remained exparte on 07.08.2018 and she was directed to let in exparte evidence and the matter was posted on 23.10.2018.

5. It is the specific contention of the learned Counsel for the petitioner that despite the civil suit filed by the petitioner is pending, the fourth respondent suddenly trespassed into the property of the petitioner and removed the cattle shed, four coconut trees and fencing in and around her property and hence, prayed for issuance of a writ of Mandamus directing the respondents not to evict the petitioner from the petitioner's land comprised in Natham Survey Nos.373/8 and 373/12 situated at Poovanthi Village, Tirupuvanam Taluk, Sivagangai District.



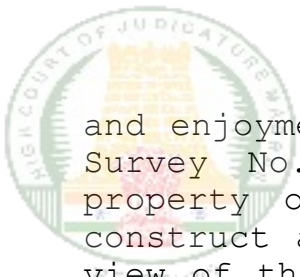
6. Refuting the submissions of the learned Counsel for the petitioner, the learned Additional Government Pleader appearing for the respondents reiterated the averments in the counter affidavit filed by the first respondent and submitted that the lands in S.Nos.373/8 and 373/12 situated at Poovanthi village, Tiruppuvanam Taluk, Sivagangai District are Government lands and in the revenue records, the said lands are shown as "Circar Poramboke Vacant" and hence, they have been classified as Government poramboke and the petitioner had illegally attempted to encroach the same after it was identified for the construction of a Panchayat Office and the petitioner had no right whatsoever over the said property.

7. It is further contended by the learned Additional Government Pleader appearing for the respondents that nobody could inherit the Government lands and the property in question is still vested with the Government. There is no registered title deed in favour of the petitioner to prove her claim that the said property had been inherited by her. The vacant land in S.No.373/12 was already transferred to the Animal Husbandry Department for constructing a Veterinary Dispensary as per the order of the first respondent dated 15.10.2012 and the dispensary is now functioning therein and put to use for public utility. The unregistered document relied on by the petitioner, dated 17.08.1978 cannot have any legal force to support the claim of the petitioner. After the lands have been identified by the first respondent for the construction of a Panchayat Office at Poovanthi village, the family members of the petitioner had illegally created the unregistered documents to claim right over the Government lands.

8. The specific contention of the learned Additional Government Pleader appearing for the respondents is that the first respondent has granted administrative sanction for the construction of the Panchayat Office building at Poovanthi village in the said land in S.No.373/8. Since the petitioner encroached upon the Government land, she cannot file any civil suit seeking the relief of declaration and permanent injunction and the civil Court cannot have any jurisdiction to try the encroachment cases. Moreover, as per Section 14 of the Tamil Nadu Land Encroachment Act, the civil Courts shall not take cognizance of the suits filed by the encroachers. The petitioner has no right whatsoever with regard to the Government lands in S.Nos.373/8 and 373/12 and the petitioner is trying to stall the construction of the Panchayat Office at Poovanthi. In view of the interim order of stay granted on 16.10.2018, the construction works are stalled and thus, prayed for the dismissal of this writ petition.

9. We have carefully considered the submissions of the learned Counsel for the parties and perused the materials available before us.

10. It is the main grievance of the petitioner that the petitioner and her elder daughter - Palaniammal were in possession



and enjoyment of the total extent of 14.05 cents of land in Natham Survey No.373/8 and the fourth respondent trespassed into the property of the petitioner on the ground that they proposed to construct a Panchayat Office building in the said land and in such view of the matter, she filed O.S.No.44 of 2018 on the file of the Sub Court, Sivagangai, seeking declaration and permanent injunction against the respondents 1 and 4 and the said civil suit is pending. During the pendency of the civil suit, the fourth respondent again trespassed into the property of the petitioner and removed the cattle shed, four coconut trees and fencing in and around her property and hence, she filed the present writ petition.

11. Whereas it is the specific stand of the first respondent that the lands in S.Nos.373/8 and 373/12 situated at Poovanthi village, Tiruppuvanam Taluk, Sivagangai District are Government lands and in the revenue records, the said lands are shown as "Circar Poramboke Vacant" and hence, they have been classified as Government poramboke and it is only the petitioner, who had illegally encroached upon the said lands knowing pretty well that the said land was identified for the construction of a Panchayat Office. There are no registered title deeds or documents in favour of the petitioner to establish her claim that the said property had been inherited by her. Further, the vacant land in S.No.373/12 was already transferred to the Animal Husbandry Department for constructing a Veterinary Dispensary as per the order of the first respondent dated 15.10.2012 and now, the dispensary is functioning therein and put to use for public utility.

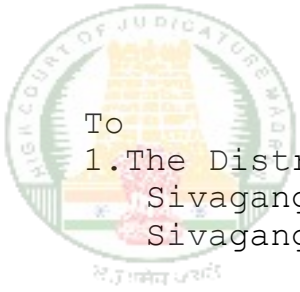
12. However, in the considered opinion of this Court, the prayer of the petitioner seeking a direction to the respondents not to evict the petitioner from the petitioner's land comprised in Natham Survey Nos.373/8 and 373/12 situated at Poovanthi Village, Tiruppuvanam Taluk, Sivagangai District, cannot be entertained under Article 226 of the Constitution of India, for the reason that this Court is not conducting any roving enquiry with regard to the disputed question of facts. It is for the petitioner to work out her remedy, if any, before the appropriate forum to establish her title over the property in question in accordance with law. Therefore, we are not inclined to entertain this writ petition and accordingly, the same fails.

13. In the result, this writ petition stands dismissed. No costs. Consequently, the connected writ miscellaneous petition is also dismissed.

Sd/
Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar(CS-I)



To

1.The District Collector,
Sivagangai District,
Sivagangai.

2.The District Revenue Officer,
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3.The Revenue Divisional Officer,
Office of the Revenue Divisional Officer,
Sivagangai,
Sivagangai District.

4.The Tahsildar,
Tirupuvanam,
Sivagangai District.

+1cc to Mr.V.Angusamy, Advocate, SR.No.99202

+1cc to M/s.Special Government Pleader,SR.No. 99264

W.P (MD) No.21637 of 2018
and

W.M.P (MD) No.19542 of 2018
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RSB

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