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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 12.11.2018

CORAM:

THE HON'BLE Mr. JUSTICE R.SUBBIAH
AND
THE HON'BLE Mrs. JUSTICE R.THARANI

W.P. (MD) No.21895 of 2018
and
W.M.P (MD) No.19834 of 2018

Dhanalakshmi

... Petitioner

Vs.

1.The District Collector,
Thoothukudi District,
Thoothukudi.

2.The Tahsildar,
Sattankulam Taluk,
Sattankulam,
Thoothukudi District.

3.The Executive Officer,
Special Grade Town Panchayat,
Panchayat Office,
Sattankulam,
Thoothukudi District.

4.R.Kumaresan

... Respondents

PRAYER: The petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the entire records pertaining to the impugned eviction notice issued by the 3rd respondent in proceedings in Na.Ka.No.367/2013/A2, dated 12.10.2018 and quash the same as illegal and consequently, direct the respondents 2 and 3 to conduct afresh enquiry / Survey No.Sy.No.1498/1 in Thachamozhi Nadar Street, Sattankulam Village, Thoothukudi District as per the title document and revenue records.

For Petitioner : Mr.PM.Vishnuvarthan

For Respondents : Mr.Jeyakumar, AGP for R1 to R3

ORDER

(Order of the Court was made by R.SUBBIAH,J.)

This Writ petition has been filed to issue a Writ of Certiorarified Mandamus, calling for the entire records pertaining to the impugned eviction notice in Na.Ka.No.367/2013/A2, dated



12.10.2018 passed by the third respondent and to quash the same as illegal and consequently, direct the respondents 2 and 3 to conduct afresh enquiry in respect of Survey No.1498/1 at Thachamozhi Nadar Street, Sattankulam Village, Thoothukudi District as per the title document and revenue records.

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2.The case of the petitioner is that originally the properties in Survey Nos.1498/1, 1498/2 and 1498/3 belongs to her great grand father-in-law viz., Arumuga Nainar and the same has been inherited by her father-in-law viz., Arumuga Nadar. Subsequently, the said properties have been partitioned among the legal heirs viz., Velpandian Nadar, Rajapandian Nadar and Thangaraj Nadar by way of a registered partition deed. Thereafter, the properties in Survey No.1498 were subdivided into three portion as Survey Nos.1498/1, 1498/2 and 1498/3 and in Survey No.1498/2 a residential house has been constructed, which belongs to the petitioner's husband. A land in Survey No.1498/3 stands in the name of the petitioner's husband and the land in 1498/1 has been used as a pathway for the petitioner's convenience.

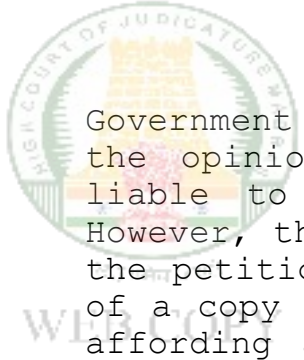
3.In such a situation, an Administrator of a Temple viz., Arulmighu Mariamman Temple, due to enmity, filed a civil suit in O.S.No.39 of 1971 before the District Munsif Court, Srivaikundam claiming right over the said pathway. After trial, the suit was dismissed holding that the pathway belongs to the petitioner's husband. Suppressing the said fact, the 4th respondent herein has filed a Writ petition in W.P.(MD)No.11164 of 2013 before this Court and this Court by order dated 25.07.2017 observed that it is for the authority to take action as per law, if on survey, it is found that there is any encroachment, as alleged. The third respondent herein without application of mind, mechanically passed the impugned notice dated 12.10.2018 directing the petitioner to vacate the encroachment made in Survey No.1498/1. Aggrieved over the same, the present Writ petition has been filed.

4.Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondents 1 to 3. In view of the nature of the order, which is going to be passed, we are of the opinion that there is no need for issuing notice to the fourth respondent herein.

5.The only grievance of the petitioner is that without issuing show cause notice as per the provisions of the Tamil Nadu Land Encroachment Act, straightaway the present eviction order dated 12.10.2018 has been passed.

6.The learned Additional Government Pleader appearing for the respondents 1 to 3 fairly submitted that no prior notice was issued before passing the present impugned order dated 12.10.2018.

7.In view of the submission made by the learned Additional



Government Pleader appearing for the respondents 1 to 3, we are of the opinion that the present impugned order dated 12.10.2018 is liable to be set aside. Accordingly, the same is set aside. However, the third respondent is at liberty to issue fresh notice to the petitioner within a period of 2 weeks from the date of receipt of a copy of this order and thereafter, conduct a fresh enquiry by affording an opportunity to the petitioner and also to the other interested parties including the fourth respondent and pass a fresh order on merits. Such exercise shall be completed within a period of 8 weeks.

8.The Writ petition is disposed of accordingly. No costs. Consequently, connected W.M.P.is closed.

Sd/-
Assistant Registrar(RTI)
/True Copy/

Sub Assistant Registrar(CS-I)

To

1.The District Collector,
Thoothukudi District,
Thoothukudi.

2.The Tahsildar,
Sattankulam Taluk,
Sattankulam,
Thoothukudi District.

3.The Executive Officer,
Special Grade Town Panchayat,
Panchayat Office,
Sattankulam,
Thoothukudi District.

+1 cc to Special Government Pleader, SR.No.94973.

NBJ

DS SKN SAR1 24 12 2018 3P 5C

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