



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 06.09.2018

Delivered on: 28.09.2018

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CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

And

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P(MD)No.19099 of 2018

and

W.M.P. (MD)No.16955 of 2018

S.Sundara Kani

... Petitioner

vs.

The Block Development Officer
(Village Panchayat),
Karungulam Panchayat Union,
Thoothukudi District.

... Respondent

Prayer: 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 notice issued by the respondent vide his proceedings in Thi3/2449/18, dated 19.07.2018 and quash the same as unconstitutional and arbitrary.

For Petitioner

: Mr.R.Pon Karthikeyan

For Respondent

: Mr.V.Anand

Government Advocate

O R D E R**(Order of the Court was made by KRISHNAN RAMASAMY, J.)**

This writ petition has been filed by the petitioner aggrieved by the impugned order passed by the respondent, dated 19.07.2018, directing him to remove the alleged encroachment.

2.The case of the petitioner is that her husband is having a piece of land in Natham Survey No.476/96 to an extent of 1 ½ cents and Manaivaari Thoraya Patta was issued in favour of the petitioner's father-in-law. According to the petitioner, the land in Survey No.476/2, Manalvilai, Vallakulam Village, Srivaikundam Taluk, Thoothukudi District with the extent of nearly 1.55 hectares is classified as 'Grama Natham' in the revenue records. In the said Survey No.476/2 hundreds of houses are built and several families are residing including petitioner family. About 21 cents in Survey No.476/2 belongs to the petitioner's father-in-law Pitchaimani, who purchased the said property by way of registered sale deed Doc.No.233/1966, dated 15.11.1966. The said Pitchaimani expired on



07.11.2010. After the death of the said Pitchaimani, the petitioner's husband and his sister alone are the legal heirs of Pitchaimani and they have been enjoying the property. Subsequently, her husband and his sister entered into an oral agreement and that the said land was allotted to her husband and therefore, the petitioner and her family has been in possession and enjoyment of the property for the past 15 years. In the said property, they have put up a small shed to keep the agricultural equipments. Further, the petitioner contended that in the meantime, the third parties sent anonymous letters to the Revenue Inspector, Seithunganallur leveling false allegations that the petitioner has encroached survey No.476/2. Therefore, the Revenue Inspector at the instance of the third parties, started to interfere with the peaceful possession and enjoyment of the property in Natham Survey No.476/2, Manalvilai, Vallakulam Village, Srivaikundam Taluk, Thoothukudi District. Hence, the petitioner was constrained to file W.P.(MD)No.11895 of 2017 seeking direction to forbear the third respondent therein from interfering with the peaceful possession and enjoyment over the petitioner's family in Natham Survey No.476/2, Manalvilai, Vallakulam Village, Srivaikundam Taluk, Thoothukudi District. In the said writ petition, this Court was pleased to pass the following order:-

"In view of the submissions made by the learned Government Advocate and the stand taken by the second respondent in his counter-affidavit, I do not find any merit in this writ petition. It is needless to point out that if the petitioner is an encroacher the Block Development Officer, shall evict the petitioner by following the procedure established by Law. In the result, the writ petition is dismissed."

3. Against the said order of dismissal, the petitioner herein preferred W.A.(MD)No.1467 of 2017. This Court, while dismissing the writ appeal, has observed as follows:-

"7. ... When the writ Court has already protected the interest of the petitioner by issuing direction to the Block Development Officer to resort to the eviction proceedings only by following the procedure established by Law, we do not find any reason to interfere with such order, as the interest of the writ petitioner, as of now, is well protected."

4. The learned counsel for the petitioner has submitted that when this Court has specifically directed the Block Development Officer to resort to the eviction proceedings by following the procedure established by Law, the said Block Development Officer has issued eviction notice, dated 19.07.2018 directly to remove the encroachment and that before issuing the said impugned eviction notice, the respondent ought to have issued show cause notice giving an opportunity to defend her case and thus the respondent has acted in gross violation of principles of natural justice. Therefore, the petitioner filed the present writ petition for the relief stated



therein.

5.The learned counsel appearing for the respondent has submitted that in Survey No.476/2, Manalvilai, Vallakulam Village, Srivaikundam Taluk, Thoothukudi District, the petitioner constructed a shed to an extent of 0.00.19 sq. meter. As per Survey report, dated 28.06.2017, the encroached property is pertaining to the street. He has produced the register of adangal, wherein the said Survey No.476/2 is mentioned as Arasu Poramboke, Street vacant land. He has also produced a lay out, wherein the petitioner's name is shown as encroacher of the Government Poramboke on the street.

6.Under the said facts and circumstances, the only grievance of the petitioner is that without giving an opportunity of hearing, the respondent has directly issued eviction notice, as if this Court has passed an order directing the respondent to issue eviction notice to evict the petitioner, whereas the Court has clearly pointed out that the petitioner should be evicted only by following the due process of Law. This Court finds, that though enough materials to show that the petitioner is an encroacher and constructed a shed on the street of the Government Poramboke land, since this Court has passed orders in W.P.(MD)No.11895 of 2017 and W.A.(MD)No.1467 of 2017, directing the respondent to evict the petitioner by following the due process of law, the respondent straight away issued eviction notice to the petitioner without giving an opportunity of hearing or to file any reply. As it is necessary to give an opportunity to the petitioner by following the principles of natural justice before issuing the eviction notice to the petitioner, we are unable to support the impugned order. Hence, we direct the petitioner to treat the said eviction notice as show cause notice and file her reply within 10 days from the date of receipt of a copy of this order and thereafter, the respondent is directed to pass orders as per law and if the respondent finds that the petitioner has encroached the street in the Government Poramboke land, they are at liberty to remove the said encroachment.

7.With the above directions, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

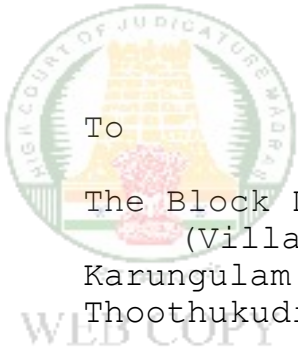
Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS I)

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To

The Block Development Officer
(Village Panchayat),
Karungulam Panchayat Union,
Thoothukudi District.

1CC TO M/S. R. PON KARTHIKEYAN, ADVOCATE SR 87531

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Order made in
W.P (MD) No.19099 of 2018

28.09.2018