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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DELIVERED ON : 23.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

AND

THE HONOURABLE MRS.JUSTICE R.THARANI

W.P(MD)No.22326 of 2017

and

W.M.P(MD)Nos.18609 of 2017 and 12 of 2018

A.Banu

... Petitioner

Vs.

1.The District Collector,
Madurai District,
Madurai.

2.The Revenue Divisional Officer cum
Executive Magistrate,
Madurai,
Madurai District.

3.The Tahsildar,
Madurai North Taluk,
Madurai District.

4.The Executive Officer,
Paravai Town Panchayat,
Paravai,
Madurai District.

5.The Revenue Inspector,
Paravai Bit - II,
Paravai,
Madurai District.

6.S.Immanuvel

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorarified Mandamus to call for the records on the file of the fourth respondent in connection with the impugned order of eviction passed by him vide his proceedings in Na.Ka.No.156/2017, dated 24.11.2017 and quash the same as illegal and arbitrary in the light of the enquiry proceedings pending before the second respondent in Na.Ka.No.273/2017/M, dated 23.01.2017 and consequently, direct the



first respondent to take appropriate action against the respondents 3 to 6 for their dereliction of duty and violation of due process of law.

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For Petitioner

: Mr.G.Thalaimutharasu

For Respondents

: Mr.M.Jeyakumar

Additional Government Pleader
for R.1, R.3 & R.5

Mr.Aayiram K.Selvakumar

Additional Government Pleader for R.4

Mr.T.Arul

for Mr.S.Sukumar for R.6

* * * * *

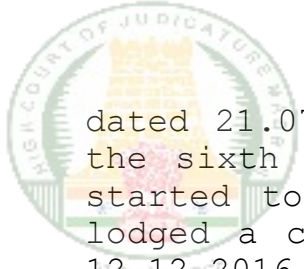
ORDER

R.SUBBIAH, J.

This writ petition has been filed seeking a writ of Certiorarified Mandamus to call for the records on the file of the fourth respondent in connection with the impugned order of eviction passed by him vide his proceedings in Na.Ka.No.156/2017, dated 24.11.2017 and quash the same as illegal and arbitrary in the light of the enquiry proceedings pending before the second respondent in Na.Ka.No.273/2017/M, dated 23.01.2017 and consequently, direct the first respondent to take appropriate action against the respondents 3 to 6 for their dereliction of duty and violation of due process of law.

2. Brief facts leading to the filing of this writ petition are as follows:

2.1. The case of the petitioner is that the house of the petitioner is situated at S.No.242/19 and 242/22, Paravai II Bit, Madurai North Taluk, Madurai District. Originally, the property in S.No.242/19 belonged to one Manickam and the property in S.No.242/22 belonged to one Michael. The said two properties are situated adjacent to each other and since there was a dispute between them, they left 1 ½ feet each and totally, 3 feet as lane in between their properties for their personal use. While so, the said properties were purchased from them by the father-in-law, namely, Kulanthai wayback in 1966 and 1984 respectively by way of registered sale deeds. Thereafter, the family members of the husband of the petitioner were in peaceful possession and enjoyment of the same without any hindrance. Meanwhile, the father-in-law of the petitioner settled the property in S.No.242/19 in favour of the husband of the petitioner and the property in S.No.242/22 in favour of his daughter, namely, Santhana Mary. Later, the said Santhana Mary sold her property in S.No.242/22 in favour of the petitioner by way of a registered sale deed dated 22.01.2014. 2.2. Since both the properties are in possession of the family of the petitioner, the said 3 feet lane is not necessary and vide rectification deed



dated 21.07.2016, they obliterated the said 3 feet lane. While so, the sixth respondent and his father-in-law, namely, A.Pilavendran, started to disturb their possession in the property. Hence, they lodged a complaint against them before the Inspector of Police on 12.12.2016, but the police forwarded the complaint to the second respondent stating that the dispute is civil in nature. The second respondent issued summons to the petitioner and the sixth respondent to appear for enquiry scheduled to be held on 09.02.2017. The petitioner appeared for the enquiry on 09.02.2017, but the sixth respondent has not chosen to appear for enquiry.

2.3. On the other hand, the sixth respondent has filed a Public Interest Litigation before this Court in W.P(MD)No.6087 of 2017 praying for issuance of a writ of Mandamus directing the second respondent to take appropriate action to remove the encroachment made by the petitioner in S.No.242/20, Paravai II Bit Village, based on his representation dated 27.03.2017 within a specified time. When the said writ petition came up for hearing, this Court directed the second respondent therein - Executive Officer, Paravai Town Panchayat, Madurai District, to dispose of the representation dated 27.03.2017.

2.4. Pursuant to the order of this Court, dated 07.07.2017, a show cause notice dated 25.09.2017 was issued to the petitioner to remove the fence and pillars put up by the petitioner in her property. The petitioner sent a reply dated 28.09.2017 requesting the second respondent to withdraw the said show cause notice stating that the enquiry is pending before the second respondent. 2.5. However, the respondents 4 and 5 ignoring the said reply, attempted to demolish the fence and pillars put up by the petitioner in S.Nos.242/19, 242/20 and 242/22 of Paravai II Bit, Madurai District. Hence, the petitioner issued a contempt notice on 10.11.2017 to the respondents 1, 3 to 5 for their disobedience of the order passed by this Court in W.P(MD)No.6087 of 2017, dated 07.07.2017. After receipt of the said contempt notice, the third respondent through the fifth respondent directed the petitioner to appear for enquiry and accordingly, the petitioner appeared for the enquiry on 14.11.2017. The third respondent enquired the petitioner in the presence of the respondents 4 to 6, but, to the shock and surprise of the petitioner, the third respondent declared the enquiry proceedings as a peace committee meeting and in the so-called peace committee meeting, the third respondent passed a resolution that the fourth respondent has to conduct an enquiry and pass final orders after issuing notice to both the parties and after surveying the disputed property.

2.6. In spite of the said resolution, the third respondent has not turned up to survey the land. However, even without considering the said resolution, the fourth respondent in an arbitrary and highhanded manner conducted an enquiry on 16.11.2017 and passed an order of eviction on 24.11.2017, which was served on the petitioner on 30.11.2017, directing her to remove the fence and pillars put up by the petitioner in the said survey numbers within three days. The act of the fourth respondent in passing the impugned order of

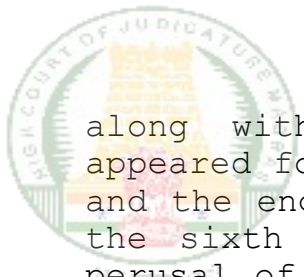


eviction without providing the appeal remedy is nothing but violation of due process of law. Hence, the present writ petition has been filed.

3. The learned Counsel for the petitioner submitted that the petitioner's father-in-law settled the property in S.No.242/19 in favour of his son, namely, Alexis and also another property in S.No.242/22 in favour of his daughter, namely, Santhana Mary. Thereafter, the said Santhana Mary sold her property in S.No.242/22 to the petitioner by way of a registered sale deed dated 22.01.2014. While so, to the shock and surprise of the petitioner, the revenue authorities have given a separate survey number as S.No.242/20 for the 3 feet lane. Now, the entire property is within the hands of one family, but ignoring all these facts, the impugned order of eviction was passed solely on the ground that the sixth respondent and five other families are using the said lane for more than 40 years and directed the petitioner to remove the encroachment, but, absolutely no proof was produced by the sixth respondent to show that they have been using the said S.No.242/20 as a pathway. Moreover, though it is claimed that the third respondent conducted a survey and produced a survey report dated Nil before this Court on 14.11.2018, nowhere it has been stated as on what date and what time and whose presence the said survey was conducted and therefore, the said report is liable to be rejected and thus, he sought for quashing the impugned order passed by the fourth respondent.

4. Countering the said submissions, the learned Counsel for the sixth respondent, by filing a detailed counter affidavit, submitted that S.No.242/20 is a public pathway measuring to an extent of 0.00.28.0 sq. mtr., (311 sq. ft.). In fact, it has been classified as a street. The said land is used by the sixth respondent and five other families as a common pathway without any hindrance thereto. While so, the petitioner herein purchased the property in S.No.242/22 by way of a registered sale deed dated 22.01.2014, measuring to an extent of 255 sq. ft. Similarly, the husband of the petitioner is the owner of the property in S.No.242/19 measuring to an extent of 600 sq. ft. In the said sale deed also, the public pathway which the sixth respondent and five other families were using, had been clearly mentioned as a pathway. The petitioner's family purchased the property on either side of the public pathway with an malicious intention to grab the public pathway, created a rectification deed dated 21.07.2016 and rectified the terms on their own whims and fancies. The said rectification deed will not create any new right in favour of the petitioner in any way and thus, prayed for the dismissal of this writ petition.

5. Whereas the learned Additional Government Pleader appearing for the fourth respondent, reiterating the averments in the counter affidavit filed by the fourth respondent, submitted that the Tahsildar, Madurai North Taluk, conducted a peace committee meeting on 14.11.2017 and thereafter, the fourth respondent issued summons to the petitioner and the sixth respondent to appear for enquiry



along with relevant documents and accordingly, the petitioner appeared for enquiry on 16.11.2017 along with the relevant documents and the enquiry was conducted in the presence of the petitioner and the sixth respondent and a detailed order has been passed after perusal of the documents which were produced by both the petitioner as well as the sixth respondent and the said order was passed in an unbiased manner and without any discrimination. In the enquiry, it has been revealed that the sixth respondent has been using the said land for more than 40 years and simply purchasing the properties in S.Nos.242/19 and 242/22, the petitioner claimed the land in S.No.242/20 which is situated in between S.Nos.242/19 and 242/22. Therefore, the impugned order has been passed to remove the encroachment made by the petitioner.

6. We have carefully considered the rival submissions and perused the materials available on record.

7. Though very many contentions have been raised by the learned Counsel for the parties, we are of the view that this Court is not conducting any roving enquiry with regard to the disputed question of facts. What we have to see is whether due opportunity of hearing was given to the petitioner and the sixth respondent before passing the impugned order.

8. A careful perusal of the records would show that an enquiry was conducted by the fourth respondent and a peace committee meeting was also conducted and thereafter, a survey was also done which is evident from the materials placed before this Court. From the survey report, the fourth respondent has come to the conclusion that the sixth respondent as well as five other families have been using the land in question as a pathway for more than 40 years. But, the family of the petitioner, after purchasing the properties in S.Nos.242/19 and 242/22, tried to obliterate the said pathway by encroaching into the same. Considering all these aspects, the impugned order has been passed only in accordance with law and also by following the principles of natural justice. When that being the position, this Court cannot find any valid ground to set aside the impugned order. Therefore, we are not inclined to entertain this writ petition and accordingly, the same is liable to be dismissed.

9. In the result, this writ petition stands dismissed, however, granting liberty to the petitioner to work out her remedy, if any, before the appropriate forum. No costs. Consequently, W.M.P(MD) No.18609 of 2017 is dismissed and W.M.P(MD)No.12 of 2018 is closed.

Sd/

Assistant Registrar(CS-III)

/True copy/

Sub Assistant Registrar(CS-IV)



To

1.The District Collector,
Madurai District,
Madurai.

2.The Revenue Divisional Officer cum
Executive Magistrate,
Madurai,
Madurai District.

3.The Tahsildar,
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Madurai District.

4.The Executive Officer,
Paravai Town Panchayat,
Paravai,
Madurai District.

5.The Revenue Inspector,
Paravai Bit - II,
Paravai,
Madurai District.

+1cc to Mr.G.Thalaimutharasu, Advocate, SR.No.96712

+1cc to Mr.S.SUKUMAR, Advocate, SR.No.96675

+1cc to M/s.Special Government Pleader,SR.No. 96763

W.P (MD) No.22326 of 2017
and

W.M.P (MD) Nos.18609 of 2017 and 12 of 2018
23.11.2018

RSB

KK/RP/SAR-4/26.11.2018/6P-9C