

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2019

CORAM

THE HON'BLE MRS.VIJAYA K.TAHILRAMANI, CHIEF JUSTICE
AND

THE HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P.No.22685 of 2019

S.Kudiarasu Devi

.. Petitioner

Vs.

The Tahsildhar
Sholinganallur, Chengalpet District.

.. Respondent

PRAYER: Petition under Article 226 of the Constitution of India seeking issuance of a writ of mandamus forbearing the respondent from disturbing the petitioner's patta property peaceful possession in Survey No.72/2A1A, extent of 4.72 cents at Neelankarai Village, Saidapet Taluk, accordance with the order passed in W.P.No.33896 of 2015, dated 6.2.2017 and without due process of law.

For Petitioner : Mr.K.M.Vijayan,
Senior Counsel for
M/s.K.M.Vijayan Associates
For Respondent : Mr.V.Jayaprakash Narayanan
Government Pleader (i/c.)

ORDER

(Order of the court was made by M.DURAI SWAMY, J.)

The above writ petition has been filed by the petitioner to issue a writ of mandamus forbearing the respondent from disturbing the petitioner's peaceful possession of the patta property in Survey No.72/2A1A of an extent of 4.72 cents at Neelankarai Village, Saidapet Taluk, in accordance with the order passed in W.P.No.33896 of 2015, dated 6.2.2017 and without due process of law.

2. Mr.K.M.Vijayan, learned Senior Counsel appearing for the petitioner submitted that earlier the petitioner filed a writ petition in W.P.No.33896 of 2015 for issuance of a writ of certiorari to quash the proceedings of the respondent dated 13.10.2015 in respect of her land in Survey No.72/2A1A measuring an extent of 4.72 cents and a Division bench of this Court, by order dated 6.2.2017, disposed of the writ petition observing that the petitioner was not served with a notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 and that action can be initiated for removing the encroachment only following due process of law. He further submitted that the respondent without following due process of law had entered into the petitioner's property and partially demolished the petitioner's property.

3. The learned Senior Counsel appearing for the petitioner also submitted that the petitioner had purchased the property from one Santhanalakshmi Ammal by a registered sale deed dated 8.2.1996 and that the patta in respect of the land in Survey No.72/2A1A1A still stands in the name of the petitioner's vendor. Though the property was purchased in the year 1996, the patta still stands in the name of the petitioner's vendor.

4. The learned Government Pleader (i/c.) filed a status report of the respondent, wherein, the Tahsildar, Sholinganallur, has specifically stated that he has initiated action only in respect of Survey No.72/1 and that no action has been initiated in respect of Survey No.72/2A1A1A of Neelankarai Village. Further, the learned Government Pleader (i/c.) also produced a rough sketch, wherein a portion of the land in Survey No.72/1 has been shown as a pond and a portion of the very same survey number is alleged to be encroached by the petitioner. According to the learned Government Pleader (i/c.), since the petitioner has filed the writ petition only in respect of Survey No.72/2A1A1A of Neelankarai Village, the prayer sought for in the writ petition cannot be granted.

5. The learned Government Pleader (i/c.) appearing for the respondent, on instructions from Mr.A.Prabakaran, Tahsildar, Sholinganallur, who is present in Court, further submitted that the respondent is not initiating any action respect of the land in Survey No.72/2A1A1A and that the respondent is taking action only for the removal of the encroachment made in Survey No.72/1. In these circumstances, it is clear that the respondent has not violated the order dated 6.2.2017 passed in W.P.No.33896 of 2016 in any manner whatsoever.

In view of the above, the writ petition is disposed of by recording the submission made by the learned Government Pleader (i/c.) as well as the status report filed by the respondent to the effect that the respondent is not initiating any action respect of the land in Survey No.72/2A1A1A and that the respondent is taking action only for the removal of the encroachment made in Survey No.72/1. No costs. Consequently, W.M.P.No.22171 of 2019 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To:

The Tahsildhar, Sholinganallur, Chengalpet District.

+2cc to M/s.K.M.Vijayan Associates, Sr.No.66615 & 66685

+1 cc to The Government Pleader Sr.No.67065