



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.06.2019

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU
AND
THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P(MD)NO.874 OF 2019
and
W.M.P(MD)No.702 of 2019

Kasim Beevi

:Petitioner

.vs.

- 1.The District Collector,
Tirunelveli,
Tirunelveli District.
- 2.The Tahsildar,
Shenkottai Taluk,
Tirunelveli District.
- 3.The Executive Officer,
Town Panchayat,
Vadakarai Keelpeedagai,
Tirunelveli District.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records pertaining to the impugned eviction order passed in proceedings in Na.Ka.No.126/2018, dated 7.1.2019, on the file of the third respondent and quash the same as illegal and pass orders within the time stipulated by this Court.

For Petitioner

:Mr.J.Jeyakumaran

For Respondents
1 and 2

:Mr.VR.Shanmuganathan
Special Govt.Pleader

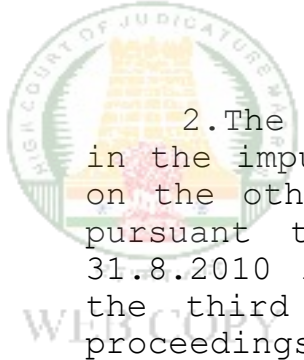
For Respondent-3

:No Appearance

O R D E R

[Order of the Court was made by **K.RAVICHANDRABAABU.,J.**]

The Petitioner is aggrieved against the eviction order passed by the third respondent, dated 7.1.2019.



2.The case of the Petitioner is that the property referred to in the impugned order has not been encroached by the Petitioner and on the other hand, she is in possession and enjoyment of the same pursuant to a registered sale deed executed in her favour on 31.8.2010 in Document No.1481/2010. Therefore, it is contended that the third respondent is not justified in issuing the impugned proceedings.

3.On the other hand, the learned Special Government Pleader appearing for the respondents 1 and 2 submitted that the third respondent issued two notices to the Petitioner on 10.12.2018 and 24.12.2018, before passing the impugned order and however, the Petitioner refused to receive the said notices and also failed to remove the encroachment. Therefore, he contended that the impugned order does not require any interference.

4.Whether the Petitioner has encroached upon the property referred to in the impugned proceedings or not is certainly a question of fact. Claiming that the Petitioner has encroached upon the said property, two notices were sent to her on 10.12.2018 and 24.12.2018 from the office of the third respondent. The papers placed by the learned Special Government Pleader before us today would show that the Petitioner has refused to receive the notice dated 24.12.2018, being the last of such two notices. Therefore, the Petitioner is not entitled to contend that she was not given an opportunity by the third respondent before passing the order of eviction. On the other hand, the fact remains that the Petitioner has failed to utilize such opportunity by refusing to receive the notices. Therefore, We find that the order of the third respondent does not suffer on the ground of violation of principles of natural justice.

5.However, We find that the third respondent is not justified in indicating the action of removal by the office of the third respondent themselves, if the Petitioner fails to remove, since such power is vested only with the revenue officials, as contemplated under Section 131(2) of the Tamil Nadu Panchayat Act, in case, the person against whom eviction notice issued by the Panchayat failed to remove the encroachment. Therefore, We clarify that further course of action by the third respondent to remove the encroachment, pursuant to the impugned proceedings has to be resorted to only by the procedures contemplated under the Tamil Nadu Land Encroachment Act by the revenue authorities, as contemplated under Section 131(2) of the Tamil Nadu Panchayat Act itself.

6.Accordingly, though We are not inclined to interfere with the present impugned order passed by the third respondent, We make it clear that the act of removal of encroachment should be done only in accordance with Section 131(2) of the Tamil Nadu Panchayat Act read with the Tamil Nadu Land Encroachment Act, 1905.



7. With the above observations, the Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is dismissed.

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// True Copy //

Sd/-

Assistant Registrar (A.E)

Sub Assistant Registrar (CS)

To

1. The District Collector,
Tirunelveli,
Tirunelveli District.

2. The Tahsildar,
Shenkottai Taluk,
Tirunelveli District.

3. The Executive Officer,
Town Panchayat,
Vadakarai Keelpeedagai,
Tirunelveli District.

+1 CC to Mr. J. JEYAKUMARAN, Advocate SR-71634.

+1 CC to SPL GP SR-72334.

ORDER MADE IN
W. P (MD) NO. 874 OF 2019
and
W. M. P (MD) No. 702 of 2019
26.06.2019

CS: (09/07/2019) 3P 6C