

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.10.2020

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

WP.No.14616 of 2020
and WMP.Nos.18124, 18127 & 18128 of 2020

Selvi

.. Petitioner

Versus

1.The District Collector,
Salem Collector Office,
Salem District.

2.The Tahsildar,
Mettur Taluk Office,
Mettur, Salem District.

3.The Executive Officer,
Kolathur Special Grade Panchayat,
Mettur Taluk,
Salem District.

...Respondents

PRAYER:- Writ petition filed under Article 226 of the Constitution of India prays to issue a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent issuing of notice vide proceedings dated 18.03.2020 under Section 6 of the Tamil Nadu Encroachment Act 1905

quash the same and direct the respondents not to evict the petitioner from the premises which is situated in S.No.546/4 and 546/10, Singiripatti Village, Ganesa Mudaliar Kadu near, Kolathur Post, Mettur Taluk, Salem District total to the extent of 0.23.5 hector.

For Petitioner : Mr.M.Senthilkumar

For Respondents : Mr.M.Elumalai
Additional Government Pleader
for R1 to R3

ORDER

[Order of the Court was made by M.SATHYANARAYANAN,J.,]

The mother-in-law of the petitioner namely, Marimuthu @ Marimuthammal had filed a Suit in O.S.No.133 of 2014 on the file of the District Munsif, Mettur against the respondents 1 and 2, the Revenue Divisional Officer, Mettur (now the Sub-Collector, Mettur), the Special Tahsildar, ADW, Omalur, praying for permanent injunction restraining the defendants and their official or their subordinates from interfering with their possession and enjoyment of the landed property classified as 'Anathinam' comprised in S.No.546/4 and 546/10 situate at Singiripatti Village, Mettur Taluk, Salem District, admeasuring an extent of 0.23.5 hector.

2. A perusal of the plaint filed in the said Suit would disclose that the plaintiff therein claimed that their ancestors had occupied there and they are in peaceful possession and enjoyment of the same for more than 100 years and there are documents evidencing the same and however, the list of documents annexed to the plaint did not indicate such possession and enjoyment of the Mother-in-Law of the petitioner. The petitioner claims to be in possession and enjoyment of the said land and property, after the demise of her Mother-in-Law and she has been issued with notice under Sections 7 and 6 of the Tamil Nadu Land Encroachment Act, 1905 by the Revenue Inspector, Kolathur stating that she has caused encroachment in respect of the land admeasuring an extent of 0.13.0 and 0.23.0 hectares in S.Nos.546/4 and 546/10 and challenging the legality of the same, the present Writ Petition is filed.

3. After receipt of the said notices, a detailed representation / explanation dated 20.03.2020 had been submitted to the 2nd respondent and prays for appropriate orders directing the 2nd respondent to consider and

dispose of the said representation and till such time, prays for deferment of the proceedings.

4. Mr.M.Elumalai, learned Additional Government Pleader accepts notice on behalf of the respondents 1 to 3 and would submit that even as per the own admission, the petitioner is a land encroacher not only in respect of land in S.NO.546/10, which is the subject matter of Suit in O.S.No.133 of 2014 on the file of the District Munsif, Kolathur, but also the land admeasuring an extent of 0.13.0 hectare in S.No.546/4 and since action has been taken by following due process of law, the petitioner cannot have any grievance and prays for dismissal of this Writ Petition.

5. This Court heard the submission of the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for respondents 1 to 3 and also perused the materials placed before it.

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6. It is relevant to extract Sections 10A of the Tamil Nadu Land Encroachment Act, 1905:

10-A. (1) Any decision or order passed under Revision, this Act may be revised either suo motu or on application —

(?) by the District Collector, if such decision or order was passed by an authorized officer or a Deputy Tahsildar, Tahsildar or Collector ;

(b) by the Board of Revenue, if such decision or order was passed by any officer ;

(c) by the State Government, if such decision or order was passed by the Board of Revenue .

(2) The power conferred by sub-section (1) shall not be exercised except on the ground that the officer or authority whose decision or order is sought to be revised appears to have exercised & jurisdiction not vested in him or it by law, or to have failed to exercise a jurisdiction so vested, or to have acted in the exercise of his or its jurisdiction illegally or with material irregularity.

(3) No decision or order shall be passed under sub-section (1) prejudicial to any person without giving such person a reasonable opportunity of making any representation that he may desire to make and such representation, if any, shall be taken into consideration, before such decision or order is passed.

7. This Court taking into consideration the above facts and circumstances and without going into the merits of the claim projected by the petitioner either in this Writ Petition or in her representation / explanation dated 20.03.2020, is of the considered view that since the petitioner is having an effective alternative remedy in the form of appeal before the 1st respondent under the above cited provision, may file an appeal within a period of two weeks from the date of receipt of a copy of this order by enclosing relevant and authenticated documents along with a petition for Stay under Section 10B of the said Act. The 1st respondent upon receipt of the same, shall entertain the appeal along with stay petition, if the papers are otherwise in order and shall take up the petition for stay at the first instance and give disposal in accordance with law within a further period of two weeks thereafter. Till such time, the 2nd respondent shall defer further decision in terms of the notices under Sections 7 and 6 of the Tamil Nadu Land Encroachment Act, 1905. The petitioner till the disposal of the appeal by the 1st respondent shall not create any third party right in respect of the land in question. It is also open to the 1st respondent to accord priority and

give a disposal of the appeal itself in accordance with law, as expeditiously as possible.

8. The Writ Petition is disposed of, accordingly. No costs.
Consequently connected miscellaneous petitions are closed.

[M.S.N.,J] [R.H., J]
13.10.2020

Internet: Yes / No

Index: Yes/No

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To

1. The District Collector,
Salem Collector Office,
Salem District.

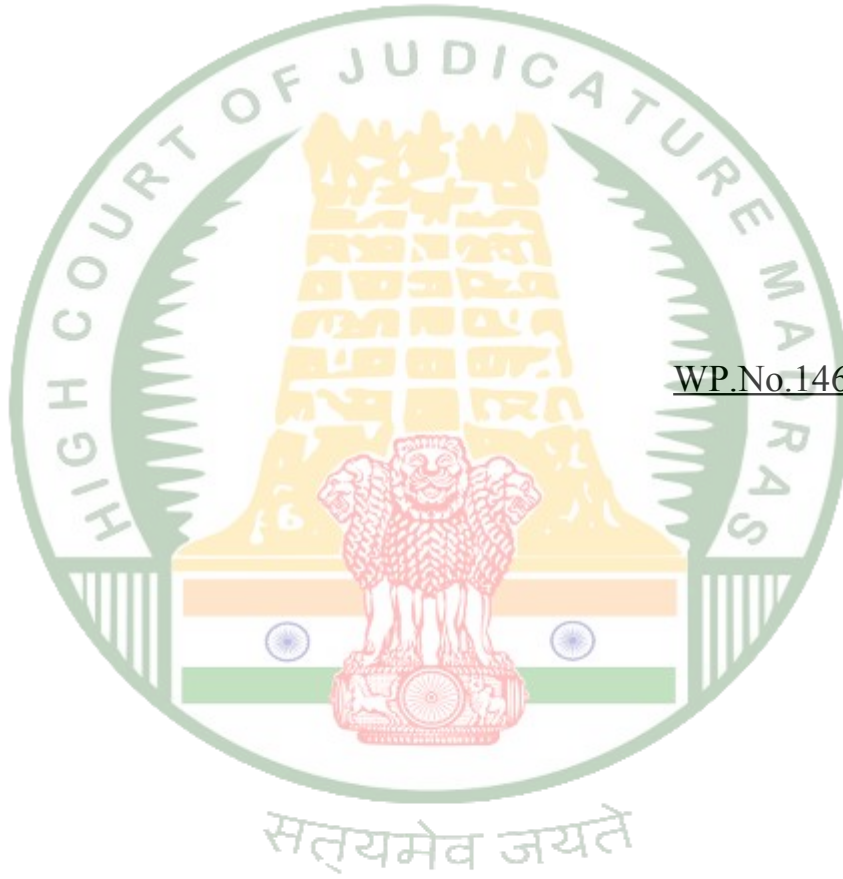
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