

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.12.2020

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MRS. JUSTICE R.HEMALATHA

WP.No.17437/2020 & WMP.No.21619/2020

Pavunu .. Petitioner

Versus

- 1.The District Collector
Chengalpet District,
Chengalpet.
 - 2.The Revenue Divisional Officer
Maduranthagam, Chengalpet District.
 - 3.The Tahsildar
Cheyyur, Chengalpet District.
 - 4.The Block Development Officer
Lathur Panchayat Union
Chengalpet District.
- ... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records pertaining to the impugned order dated 02.11.2020 having reference Na.Ka.NO.6466/2019/A1 on the file of the 3rd respondent, the Tahsildar, Cheyyur Taluk and quash the same.

For Petitioner : Mr.E.Murugan

For RR 1 to 4 : Mr.M.Elumalai
Additional Government Pleader

ORDER

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

- (1)By consent, the writ petition is taken up for final disposal and is disposed of by this order.
- (2)Mr.M.Elumalai, learned Additional Government Pleader accepts notice on behalf of respondents 1 to 4.
- (3)The petitioner is a resident of Karukamalai Village,

- Cheyyur Taluk, Chengalpet District and according to her, the 3rd respondent, vide proceedings in Va.Aa.Na.Ka.No.4797/2000/Aa1 dated 19.10.2000 in exercise of powers under Revenue Standing Order No.21 Para 7 Part [ii], had assigned a house site admeasuring to an extent of 0.01.0 cent in Block No.403/23 and a parcel of land in Plot No.403/5 [Part] in Akkinampattu Village, Cheyyur Taluk, Chengalpet District and thereafter, she has put up a superstructure which is also assessed to statutory levies.
- (4) The learned counsel for the petitioner, on instructions, would submit that apart from the said house site assigned, the petitioner did not encroach upon any public land / water body / land belonging to the Local Body and the said submission on instructions, is placed on record.
- (5) The primordial submission made by the learned counsel for the petitioner is that, to her shock and surprise, the 3rd respondent has issued the impugned notice dated 02.11.2020 based upon the order passed by this Court in WP.No.28164/2019 as well as the representation of one Gnaa Soundari and two others, has concluded that the petitioner had encroached upon the land in S.No.403/5 admeasuring to an extent of 0.02.0 ares and without indicating the provision of law under which the action is being taken, called upon her to vacate on or before 17.11.2020, failing which encroachment will be removed on 19.11.2020.
- (6) The learned counsel for the petitioner would submit that subsequent to the filing of the writ petition on 18.11.2020, a representation has also been given and prays for appropriate orders.
- (7) Per contra, Mr.M.Elumalai, learned Additional Government Pleader appearing for the respondents would submit that admittedly, the petitioner was granted house site in respect of the land admeasuring to an extent of 0.01.0 cent in Block No.402/3 and the land in S.No.403/5 [part] in Karukamalai Village ; whereas the impugned Notice refer to the encroachment apart from the land assigned to the petitioner and since action is being taken strictly in accordance with law, the petitioner cannot make any grievance and prays for dismissal of this writ petition.
- (8) This Court has considered the rival submissions and also perused the materials placed before it.
- (9) A perusal of the impugned proceedings would prima facie disclose that the 3rd respondent, before calling upon the petitioner to vacate and deliver the vacant and peaceful possession of the land in question, did not indicate the provision of law under which the action is being taken.
- (10) Normally, in these kind of cases, Sections 5, 7 and 6 of the Tamil Nadu Land Encroachment Act, 1905, can be invoked for removal of encroachments and surprisingly, no provision of law has been quoted except citing the order passed by this Court in WP.No.28164/2019. In fact, by issuing this kind of notice, the 3rd respondent had only aided the

petitioner to delay the proceedings pertain to removal of encroachment.

(11) In the result, the writ petition is partly allowed and the impugned order passed by the 3rd respondent dated 02.11.2020 is hereby quashed. The 3rd respondent is granted liberty to proceed against the petitioner by invoking appropriate provision of law for removing the alleged encroachment caused by the petitioner in S.No.403/5 [Part] at Karukamalai Village, Cheyyur Taluk, Chengalpet District and also by adhering to the principles of natural justice and complete the said exercise within a period of ten weeks from the date of receipt of a copy of this order / uploading of the order copy in the website and communicate the decision to the petitioner and till such time, the 3rd respondent shall defer further decision as to the removal of the alleged encroachment on the part of the petitioner. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

AP

To

- 1.The District Collector,
Chengalpet District,
Chengalpet.
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Lathur Panchayat Union
Chengalpet District.

+1cc to Mr.E.P.Senniyangiri, Advocate SR.39901
+1cc to the Government Pleader SR.40105

WP.No.17437/2020

AJB (CO)
CB(06/01/2021)