

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.02.2021

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

WP.No.2387 of 2021
and W.M.P.No.2693 of 2021

Krishnaveni ... Petitioner

Versus

1.The District Collector,
Kallakuruchi District.

2.The Revenue Tahsildar,
Ulundurpet Taluka,
Kallakuruchi 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 notice of the second respondent dated 30.12.2020 issued to the petitioner for removal of encroachment in Survey No.167/3, in the village of Ulundur Village, Ulundurpet Taluk and Kallakuruchi District and quash the same.

For Petitioner : Mr.G.Gayathri

For Respondents: Mr.R.Vijayakumar
Additional Government Pleader

ORDER

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

The petitioner claims to be in possession of land in S.F.No.167/3, along with superstructure bearing Door No.10/2, Chinnasamy Nagar, Ulundurpet Perurachi, Ulundurpet Taluka, Kallakuruchi District and according to the petitioner, she is in possession of the same for over 50 years and the superstructure being put up by her is also subjected to statutory levies and apart from that she has been issued with Family Ration Card and also in receipt of benevolence extended from the Government from time to time.

2. The learned counsel appearing for the petitioner would submit that to her shock and surprise, the office of the 2nd respondent has issued the impugned notice dated 30.12.2020, under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 and even prior to the same, she has submitted a detailed representation in respect of the earlier notice, purported to be issued under Section 7 of the said Act, dated 24.11.2020 and without considering and disposing of the said representation, urgent action is being taken to dispossess her from the land and superstructure in question. It is the further submission of the learned counsel appearing for the petitioner that she is having poor economical background and also in a lowest strata of society and in the on-set pandemic COVID-19 situation, if she is dispossessed from the land and superstructure in question, she will be put to irreparable loss, grave hardship and other difficulties and prays for appropriate orders.

3. Mr.R.Vijayakumar, learned Additional Government Pleader accepts notice on behalf of the respondents and would submit that in the light of the effective alternative remedy available to the petitioner, the present Writ Petition is not maintainable.

4. This Court has carefully considered the rival submissions and also perused the materials placed before it.

5. It is relevant to extract Section 10 and 10-B of the Tamil Nadu Land Encroachment Act, 1905:

"Section 10:- An appeal shall lie [a] to the Collector from any decision or order passed by a Tahsildar or Deputy-Tahsildar [or an authorised officer] under this Act, and [b] to the District Collector from any decision or order passed otherwise than on appeal, and [c] to the Board of Revenue from any decision or order of a District Collector otherwise than on appeal.

Section 10-B:- Pending disposal of any appeal or application or proceedings for revision under this Act, the Collector, the District Collector, the Board of Revenue, or the State Government, as the case may be, may by order, and subject to such conditions as may be specified therein, stay the execution of the decision or order appealed against or sought to be revised."

6. Though the petitioner prays for a larger relief, this Court in the light of the above facts and circumstances and without going into the merits of the claim projected by the petitioner, either in her representation dated 01.12.2020, or in this Writ Petition, grants liberty to the petitioner to file an appeal by way of making challenge to the impugned notice dated 30.12.2020, issued by the 2nd respondent along with petition for interim relief under Section 10-B of the said Act, within a

period of four weeks from the date of receipt of a copy of this order / uploading of the order in the website and upon receipt of the same, the 1st respondent / delegated authority shall entertain the appeal, if the papers are otherwise in order and take up the petition for interim relief filed under Section 10-B of the Tamil Nadu Land Encroachment Act, 1905 at the first instance and give a disposal in accordance with law, within a further period of four weeks thereafter and till such time, the 2nd respondent shall defer further decision in terms of the impugned notice dated 30.12.2020 and it is also open to the 1st respondent / delegated authority to give priority and dispose of the main appeal itself, in accordance with law.

7. In the result, the Writ Petition stands disposed of. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The District Collector,
Kallakuruchi District.

2.The Revenue Tahsildar,
Ulunduurpet Taluka,
Kallakuruchi District.

+1cc to M/s.G.Gayathri, Advocate Sr.6504
+1cc to the Government Pleader Sr.6664

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