

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	23.02.2021
Pronounced On	17.04.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.10644 of 2015

(Through Video Conferencing)

G.Indirani

... Petitioner

Vs.

1.The District Collector,
Kanchipuram.

2.The Commissioner,
Pallavaram Municipality,
Pallavaram, Kanchipuram District. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus to forbearing the respondents from demolishing and evicting the petitioner from her dwelling house situated in No.13, Boobathi Nagar, Keel Kattalai, Chennai - 600 117 and the agriculture land situated in Survey No.356/12 except as per the due process of law contained in Tamil Nadu Municipalities Act 1920 and to direct the second respondent to pay compensation of Rs.10,00,000/- to the petitioner towards the monetary loss and mental agony suffered by her due to the illegal demolition of Fabric centre and the destruction caused due to the uprooting the banana plantation.

For Petitioner : Mr.L.N.Praghasham

For First Respondent : Mr.N.Inbanathan, A.G.P.

For Second Respondent : Mr.N.K.Ponraj

O R D E R

This Writ Petition has been filed by the petitioner to forebear the respondents from demolishing and evicting the petitioner from her dwelling house located at No.13, Boobathi Nagar, Keel Kattalai, Chennai - 600 117 and from the

agricultural land at Survey No.356/12 except in accordance with law and due process of law under the provisions of the Tamil Nadu District Municipalities Act, 1920 and also to compensate the petitioner for the monetary loss and the mental agony suffered by the petitioner due to demolition of a Fabric Center and for uprooting the banana plantation and for such other reliefs.

2. It is the case of the petitioner that she had entered into an agreement with son of Kanda Swami Mudaliar and with Sankaran on 19.05.1975, whereby, latter agreed to sell an extent of 93 Cents of agricultural land in Survey No.356/12 in Keel Katalai Village, Ward H, Block 41, Town Survey No.1, Saidapet Taluk to the petitioner. It is further submitted that the Tahsildhar also issued an ownership patta to the petitioner in the year 1986 and that since 1986, the petitioner has been in possession of the aforesaid land measuring an extent of 93 Cents without any disturbance from any corner.

3. While so, the second respondent all of a sudden came and demolished a fabrication unit in the land on 08.04.2015 and chopped banana plantation. It is therefore submitted that the action of the second respondent was arbitrary and without due process of law and therefore the petitioner was entitled for compensation.

4. Defending the action taken by the second respondent, it was submitted that the land in question has been classified as Madvu in survey records and was a part of the water body used for impounding water for agriculture and to re-charge the nearby wells. It was submitted that the land in question was a part of the water body and was illegally encroached by the petitioner and the patta was wrongly granted to the petitioner.

5. It was further submitted that the petitioner was asked to vacate the premises or in the alternative, establish a proof of the ownership over the property. However, the petitioner failed to produce any documents to establish any title or permitted possession over the land.

6. It was further submitted that notice was issued to the petitioner, but, the petitioner refused to accept the same and therefore the respondents proceeded to demolish the fabrication unit after affixing the notice on the said property on 11.03.2015.

7. It was further submitted that the house has been built on encroached property and merely because the petitioner had property tax assessment ipso facto did not confer any right to the petitioner to occupy poromboke Madvu lands as these lands were meant for recharging the water body and groundwater.

8. It has been further stated that no action has been initiated against the petitioner as far as the dwelling unit is concerned. The respondents further submitted that petitioner has never approached the respondent. It was therefore submitted that this Writ Petition is liable to be dismissed.

9. As there are certain doubts in respect of the service of notice on the respondent before the action was taken by the respondents in demolishing the shed where fabrication unit was situated, the files of the respondents were called for inspection and perused.

10. I have considered the arguments advanced by the learned counsel for the petitioner and respondents. I have also perused the documents filed in support of the present Writ Petition and the internal records of the respondents which were summoned for perusal.

11. The respondents have issued notice to the petitioner to produce a proof as to the ownership of the land. The petitioner has on the other hand produced a patta before this Court which is an undated document purportedly issued in the year 1986 and was signed by the Tahsildar to enable the petitioner to obtain electricity connection, loan and etc.

12. It is not clear on what basis the said patta was granted to the petitioner. Nevertheless, existence of the patta indicates that the petitioner was in possession of the aforesaid land though it has been classified as "Maduvu". In the year 2005, the State Assembly has passed Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 in addition to the pre-existing the Tamil Nadu Land Encroachment Act, 1905. These two enactments prescribe manner, in which, action has to be taken before removing encroachment.

13. According to the petitioner, she is in possession of land in Survey No.356/12 to an extent of 93 Cents. On scrutiny of the files maintained by the respondents, it is noticed that an extent of 0.91 acre of land classified as "Maduvu" in Survey No. 356/12 as was in possession of the petitioner when there is a dwelling unit on 0.02 acres of land and therefore the dwelling house alone was spared from being demolished.

14. Permission/Assistance from various law enforcing authorities for demolishing the property was also obtained as is evident from letter dated 01.04.2015. The file also contains a notice dated 11.03.2015 issued to the petitioner. At the backside of the office copy of the said notice, there is an endorsement to the effect that the petitioner refused to receive the notice and therefore it is only under those circumstances the fabrication shed was demolished and the banana plantations was removed.

15. The said notice however refers to land in Survey No. 357 in ward H, Block 41, T.S No.1 Door No.13, Boopathi Nagar, whereas, the property of the petitioner is at Survey No.356/12 in No.152-Kovilambakkam Village, Saidapet Taluk, Chengalpattu District. Thus, there is irregularity. Even if the notice was sent by post, it would have never been served on the petitioner.

16. Therefore, I direct the respondents to re-verify whether the land at Survey No.356/12 in No.152 - Kovilambakkam Village, Saidapet Taluk, Chengalpattu District in the possession of the petitioner was in contravention of the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 and Tamil Nadu Land Encroachment Act, 1905. If so, they may issue suitable notice for removing such encroachments.

17. The petitioner, if advised, may file suitable reply to such notice. Thereafter, order may be passed after hearing the petitioner. The respondents are also at liberty to take steps to cancel the patta given to the petitioner in accordance with law.

18. In case the petitioner is able to establish that the demolition and uprooting of the banana plantation were unwarranted, the respondents shall quantify the loss and compensate the petitioner suitably. The petitioner may give the calculation along with their representation.

19. Accordingly, this Writ Petition stands disposed of. No cost.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

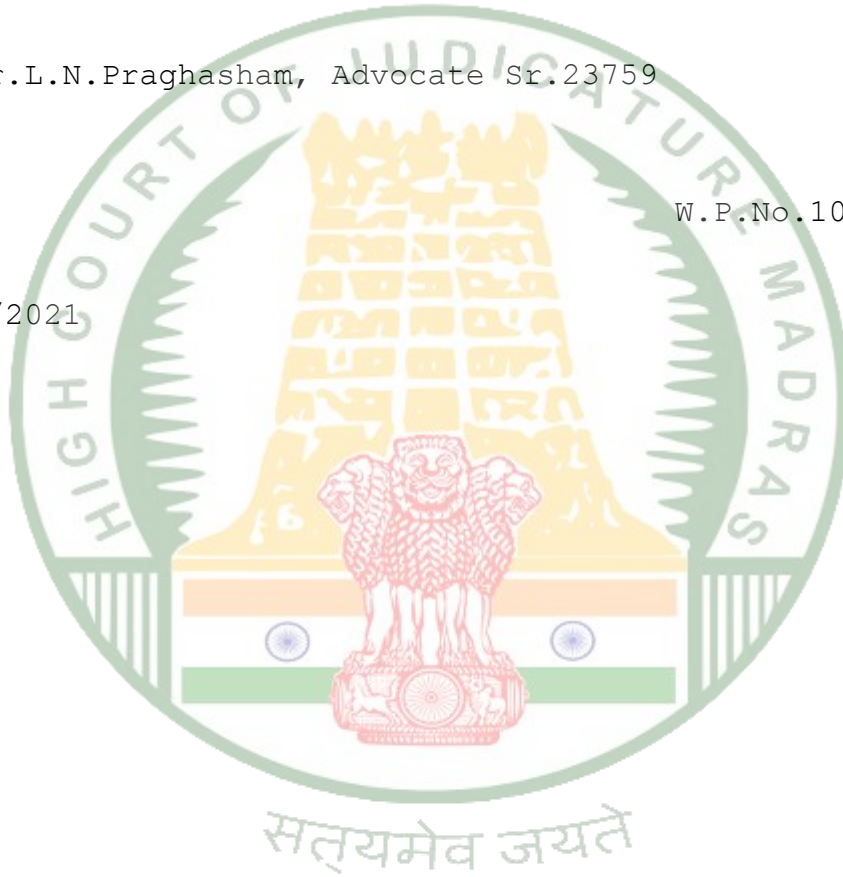
1.The District Collector,
Kanchipuram.

2.The Commissioner,
Pallavaram Municipality,
Pallavaram,
Kanchipuram District.

+lcc to Mr.L.N.Praghasham, Advocate Sr.23759

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