

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2021

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.No.27417 of 2017 and

W.M.P. No.29316 of 2017

Indirani

.. Petitioner

Vs.

1.The Secretary to Government
Highways & Minor Ports Department
Fort St. George, Secretariat
Chennai - 600 009

2.The Director General
Highways Department
Integrated Chief Engineers' Office
HRS Campus, 76 Sardar Patel Road
Guindy,
Chennai - 600 025

3.The Executive Engineer
Kancheepuram District State Highways
Integrated Chief Engineers' Office
HRS Campus, 76 Sardar Patel Road
Guindy,
Chennai - 600 025

4.The District Collector
Kancheepuram District
Kancheepuram

5.The Special Tahsildar
Land Acquisition
Sholinganallur Taluk
Sholinganallur, Kancheepuram District

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus forbearing the respondents from demolish the building and taking possession of the land comprised in S. No.123/1B situated at door No.137 Medavakkam Main Road, Kovilambakka, Sholinganallur Taluk, Kancheepuram District without having recourse to the Tamil Nadu Highways Act, 2001 or in the manner known to law.

* * *

For Petitioner : Mr.G.Rajan

For R1 to R5 : Mr.A.Kumar
Special Government Pleader

O R D E R

This writ petition is filed for issuing a Writ of Mandamus forbearing the respondents from demolishing the building and taking possession of the land comprised in S. No.123/1B situated at door No.137 Medavakkam Main Road, Kovilambakkam, Sholinganallur Taluk, Kancheepuram District, without having recourse to the Tamil Nadu Highways Act, 2001 or in the manner known to law.

2. The brief facts that are germane for disposal of the writ petition are as follows: The petitioner states that her husband occupied and enjoyed the property measuring about 900 sq.ft. roughly around two cents in S. No.123/1B, Block No.8 in Kovilambakkam Village, Sholinganallur. It is the case of the petitioner that her husband was granted house site patta in the year 1973 in respect of a small extent and that her husband had put up a construction in the property. Petitioner further states that her husband also purchased an extent of 4200 sq.ft. comprised in the same survey number, namely S. No.123/1B, Kovilambakkam Village, Sholinganallur Taluk, by virtue of a sale deed dated 14.12.1981. The petitioner constructed a tiled house in the property and had obtained electricity service connection. The petitioner, earlier filed a writ petition in W.P. No.18897 of 2014 praying for grant of patta in respect of the property measuring an extent of 4200 sq.ft. in S. No.123/1B. This court, disposed of the earlier writ petition filed by the petitioner, with a direction to the Tahsildar, Sholinganallur, to consider petitioner's representation and to pass order on merits, in accordance with law, within a period of 8 weeks, from the date of receipt of a copy of the order.

3. Stating that the Highways authorities are trying to interfere with the possession of the petitioner and that the petitioner is likely to be dispossessed, the petitioner has come forward with the present writ petition forbearing the respondents from demolishing the building put up by the petitioner and for taking possession of the land comprised in S. No.123/1B.

4. The third respondent has filed a counter affidavit in the writ petition inter alia pointing out that the land in S. No.123/1B in Kovilambakkam Village, Sholinganallur, is a patta

land, registered in the name of an individual by name B.R.Palika. It is further stated that the land measuring an extent of 7.43.0 Hectares including the land in the enjoyment of petitioner is located in Survey No.123/26. It is the specific case of the respondents that the land in Survey No.123/26 is classified as 'meikkal poramboke', and hence the petitioner is not entitled to any patta or claim title. It is stated by third respondent that petitioner has not only encroached the poramboke land but also put up a construction in S. No.123/26 obstructing the Kilkattalai Channel apart from causing hindrance to the traffic flow.

5. It is the specific case of the respondents that the Public Works Department carried out eviction in major portion of the land in Survey No.123/26 on both sides of the Kilkattalai channel. The petitioner has produced before this court the unregistered documents titled as oral sale agreement in favour of her husband. No patta or revenue record is produced to show that her husband's vendor had title. The petitioner has produced another sale deed dated 14.12.1981 which is also unregistered and hence inadmissible. The kist receipts produced by petitioner without patta or supporting revenue document cannot be accepted to establish petitioner's title. One of the revenue documents produced by the petitioner and found in petitioner's typed set gives an indication that the property in S. No.123/1B is also part of 'Meikal'. From the records that are produced before this court, this court is convinced that the land in which the petitioner is in possession, is not a patta land and that therefore, the Revenue officials is not expected to grant patta in favour of the petitioner. The petitioner has not impleaded the Revenue officials before whom he seeks patta. However, the petitioner prays for an order against the Highways Department and Land Acquisition Tahsildar, forbearing them from demolishing the building and taking possession of the land. Since the petitioner has not produced any patta issued by the Revenue officials, the petitioner's possession cannot be recognised as lawful.

6. The case of the respondents that the petitioner is in encroachment of the government land, cannot be ignored. From the photographs produced before this court by the Highways Department, it is seen that the Highways Department has formed road surrounding petitioner's construction. Except a small portion in which petitioner's construction is there, the remaining land situate in the said survey number, has been used for the formation of the road. As a matter of fact, the construction put up by the petitioner is a hindrance to the public for free traffic. Since the petitioner has not produced any patta, the petitioner's possession cannot be regularised, especially, when the property is a property of government and

the petitioner's building is causing hindrance to the public. Since this court has passed an order earlier in the writ petition filed by the petitioner, directing the Revenue officials to consider her representation for grant of patta, the District Collector, Kancheepuram, is directed to give instructions to the concerned Tahsildar, to pass appropriate orders on the petitioner's representation for issuance of patta. Merely because, the petitioner has put up some construction in the government land, the same cannot be taken advantage of by the petitioner to claim title when the land is encroached by the petitioner. Since the respondents require the land for the purpose of widening the road, this court also requested the petitioner's counsel to verify whether the petitioner is willing to take compensation for the building and vacate the land. However, the petitioner's counsel reported that his client is not willing to vacate the property as he is entitled to get patta, as per the previous directions of this court. Since the petitioner is hopeful in getting patta based on the earlier direction of this court, this court directed the Revenue officials to produce before this court the relevant files with regard to the land under the encroachment of the petitioner. A perusal of the files, reveals that the Revenue officials have taken action against the petitioner for eviction under the Tamil Nadu Land Encroachment Act, 1905. Though a notice was issued to the petitioner, for removal of encroachment, it is stated that no action could be taken by the respondents on account of the order passed by this court earlier and the present writ petition pending before this court.

7. Since the land, which is classified as 'Meikkal Poramboke' is required for a public purpose, it is open to the respondents to form the road after removal of encroachment. For this purpose, this court is of the view that the District Collector can be directed to initiate proceedings against the petitioner through the Revenue Tahsildar or any other person authorised to take action under the provisions of the Tamil Nadu Land Encroachment Act. सत्यमेव जयते

8. Accordingly, this writ petition is disposed of with the following directions:

(i) The fourth respondent, namely the District Collector, Kancheepuram District, Kancheepuram, is directed to give necessary instructions to the Revenue officials to dispose of the representation of the petitioner for issuance of patta considering the land in which the petitioner has put up construction is the government land classified as 'Meikkal Poramboke' and it is required for a public purpose.

(ii) The fourth respondent, is further directed to initiate proceedings against the petitioner through the competent Tahsildar under the Tamil Nadu Land Encroachment Act, 1905, by following the procedure.

(iii) If the petitioner is served with a notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, it is open to the Revenue officials to proceed further, after considering the objections, if any, received from the petitioner.

(iv) Even if no notice is issued to the petitioner so far, the fourth respondent is directed to ensure that appropriate proceedings would be initiated against the petitioner for removal of encroachment. The proceedings that may be initiated pursuant to the direction of this court in this order, should be completed within a period of four weeks from the date of receipt of a copy of this order.

(v) If the petitioner refuses to vacate the property, after serving an order of eviction, it is also open to the respondents to take action, in accordance with law, as contemplated under the Tamil Nadu Land Encroachment Act, 1905, by using force.

(vi) After removal of encroachment, it is open to the respondents to lay the road, as contemplated, within a period of 12 weeks thereafter, after removal of the encroachment in the manner known to law.

The respondents shall also report compliance of the directions of this court. The fourth respondent is also directed to file a report as and when the direction of this court is complied with. No costs. Consequently, the connected writ miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

asr

To

1.The Secretary to Government
Highways & Minor Ports Department
Fort St. George, Secretariat
Chennai - 600 009

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Kancheepuram District
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5.The Special Tahsildar
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Sholinganallur Taluk
Sholinganallur, Kancheepuram District

+1 cc to Mr.R.Rajarajan Advocate sr13577

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