

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2021

CORAM :

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

W.P.No. 29653 of 2018

K.Soundaram

.. Petitioner

Vs.

1.The District Collector,
Dharmapuri District,
Collectorate,
Dharmapuri - 636 705.

2.The Revenue Divisional Officer,
Salem Bypass, Periyar Nagar,
Harur,
Dharmapuri District - 636 903.

3.The Tahsildar,
Pappireddipatti Taluk,
Dharmapuri District - 636 905.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records relating to the notice dated 10.12.2017 and 09.01.2018 issued by the third respondent to the petitioner under Section 7 and 6 of the Tamil Nadu Land Encroachment Act, 1905 in connection with the land measuring an extent of 2.030 hectares in S.No.116/4, 040.5 hectares in S.No.125/3, 1.20.5 hectares in S.No.126/3 and 1.385 hectares in S.No.126/4 in Vellapatti Village, Pappireddyapatti Taluk, Dharmapuri District and quash the same as barred by limitation and violative of the fundamental rights of the petitioner under articles 14 and 21 of the Constitution of India and consequently direct the third respondent to issue patta for the said land in the name of the petitioner.

For Petitioner : Ms.Nalini Chidambaram
for Ms.C.Uma

For Respondents : Mr.R.Vijayakumar,
Additional Government Pleader

ORDER

(Order of the Court was made by M. SATHYANARAYANAN, J.)

The petitioner claims to be the owner of the land ad-measuring to an extent of 12 acres in Survey Nos.116/4, 125/2 and 126/3 in Vellalapatti Village and the said purchase is said to have been made between 1967 and 1974. The petitioner has claimed that the agricultural operations are going on in the said land.

2. The petitioner was issued with notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 dated 10.12.2017 alleging that the petitioner, who claimed to be in possession of the various extent of land in the above said survey number, is liable to be evicted. Though the petitioner vide her response dated 22.12.2017 made a request to give one month time to respond to the Section 7 notice dated 10.12.2017, did not submit any reply. The Section 7 notice was followed by Section 6 notice dated 09.01.2018 and making a challenge to both notices, the present writ petition is filed.

3. Learned counsel appearing for the petitioner would submit that in connected matters, the petitioners therein were directed to avail the alternative remedy and, therefore, similar orders can be passed in this writ petition.

4. Per contra, Mr.Vijaya Kumar, learned Additional Government Pleader, who accepts notice on behalf of respondents would submit that the petitioner, who had purchased a certain extent of land in Vellalapatti Village in Survey No.116/4 and the said land was originally assigned to a person belonging to Adi Dravidar Community and in violation of the conditions of the payment, the property has been conveyed, which was purchased by the petitioner and vide proceedings by the Revenue Divisional Officer, Harur dated 30.06.2015 in Na.Ka.No.1943/2015/A3 classification has been changed as "government punja land" and insofar as the land ad-measuring 1.38.0 hectare in Vellalapatti village Survey No.126/4 is concerned, the patta no.142 stands in the name of Francis 'mottaiyan' and it is not a Adi Dravidar assigned land.

5. This Court considered the rival submissions and perused the materials placed before us.

6. The petitioner is having an effective alternative remedy in respect of notices dated 10.12.2017 and 09.01.2018 by filing an appeal under Section 10 of the Tamil Nadu Land Encroachment Act, 1905 to the first respondent or the delegated appellate authority and the said appeal should have been filed within 30

days, from the date of the decision or order, in terms of sub-section (1) of Section 11 of the said Act.

7. Though the petitioner prayed for a larger relief, this Court in light of the above facts and circumstances, and without going into the merits of the claim projected by the petitioner in this writ petition, grants liberty to the petitioner to avail the appeal remedy, by filing an appeal before the first respondent or delegated appellate authority along with the petition for condonation of delay explaining the reasons for non-filing of the appeal in time within a period of four weeks from the date of receipt of a copy of this order/uploading of this order in the website and upon receipt of the same, the first respondent or the delegated appellate authority may entertain the appeal, if the papers are otherwise in order and take up the petition for condonation for delay and give a disposal on merits within a period of three weeks thereafter and communicate the decision taken, to the petitioner. Till such time, the third respondent shall defer further possession, in terms of the impugned Section 7 and 6 notices dated 10.12.2017 and 09.01.2018, respectively. It is also made clear that the petitioner till the disposal of the petition for condonation of delay by the first respondent shall not create any third party rights in respect of the land in question.

8. The writ petition stands disposed of accordingly. No costs. Consequently, connected W.M.P.Nos. 34618 and 34620 of 2018 are closed.

Sd/-

Assistant Registrar(CS VII)

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Sub Assistant Registrar

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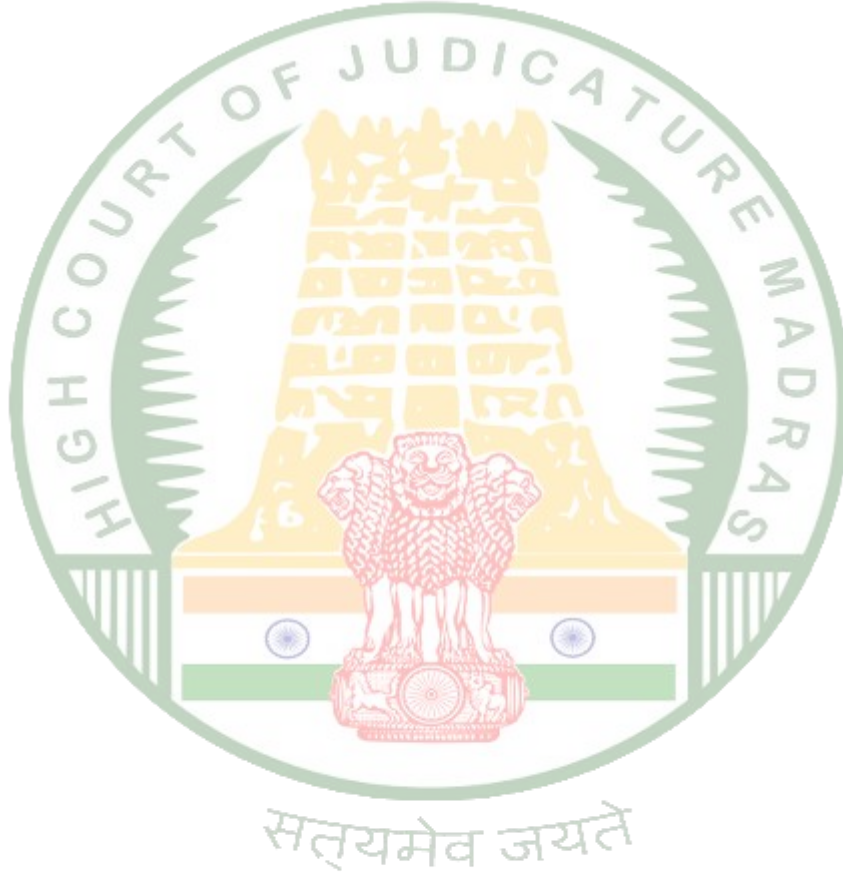
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+1cc to M/s.C.Uma, Advocate Sr.NO.17671
+1cc to Government Pleader Sr.NO.18424

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PL (CO)
NR 21/04/2021



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