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W.P.[MD]No.11897 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.P.[MD]No.11897 of 2021

and

W.M.P(MD) No.9339 of 2021

R.Meena

... Petitioner

Vs.

1.The District Collector,
Office of District Collector,
Sivagangai District,
Sivagangai.

2.The Tahsildar,
Thirupathur Tashildar Office,
Thirupathur Taluk,
Sivagangai District.

3.The Deputy Tahsildar,
Thirupathur Taluk,
Sivagangai District.

4.M.Veeraiya

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the third respondent's impugned notice under Section 7 of the Tamil Nadu Land Encroachment Act 3 of 1905 dated 02.07.2021 and quash the same as devoid of merits and consequently directing the respondents No.1 to 3 to grant patta to the petitioner as per the Revenue Policy Note 2001 - 2002, the land in her possession enjoyment in Survey No.17/1 and extent of 0.53.00 in Karethelpatti Village, Thirukalapatti Panchayat, Mathavarayanpatti Group, Thirupathur Taluk, Sivagangai District as per the Revenue Policy (2001 - 2002) and not to disturb her possession till the final verdict of her appeal dated 03.07.2021 under Section 10 of the Tamil Nadu Land Encorachment Act 3 of 1905, within the period stipulated by this Court.

For Petitioner : Mr.A.Haja Mohideen

For Respondents : Mr.R.Baskaran
1 to 3 Standing Counselfor Government



ORDER

(Order of the Court was made by **T.S.SIVAGNANAM, J.**)

Heard Mr.A.Haja Mohideen, learned counsel appearing for the petitioner, Mr.R.Baskaran, learned Standing Counsel for Government, appearing for the respondent Nos.1 to 3.

2.This Writ Petition challenges the notice issued by the third respondent dated 02.07.2021, on the ground that without following the procedure under the Tamil Nadu Land Encroachment Act 3 of 1905, the eviction proceedings have been initiated.

3.On a perusal of the impugned notice, it appears that the impugned notice has been issued only based on the direction issued by this Court in W.P.(MD) No.6571 of 2021 dated 24.03.2021, filed by the 4th respondent herein. In the said Writ Petition, this Court has directed the respondent No.3 to take appropriate action in accordance with law to remove the encroachment. Therefore, necessarily the procedure under the Tamil Nadu Land Encroachment Act 3 of 1905, has to be followed.

4.However, we wish to point out that the extent of land encroached appears to be huge. Apart from that, it is not as if the petitioner has not received any earlier notice as pointed out by the learned counsel for the fourth respondent.

5. Even prior to the filing of the Writ Petition by the fourth respondent in W.P.(MD) No.6571 of 2021, notice was issued for eviction. But, however, no further action was initiated. A suit was filed by the petitioner in O.S.No.14 of 2021 on the file of the District Munsif Court, Thirupathur and somehow she was able to restrict the authorities from removing the encroachment.

6.Mr.R.Baskaran, learned Standing Counsel for Government, on instructions, submitted that the authorities have realized the mistake and on 03.07.2021 notice under Section 7 of the Tamil Nadu Land Encroachment Act 3 of 1905, has been issued to the petitioner and a copy of which has been marked to the fourth respondent.

7.In the light of the same, the Writ Petition is allowed and the impugned notice of the third respondent dated 02.07.2021 is set aside and the petitioner is directed to file her objection to the notice dated 03.07.2021, not later than 29.07.2021. It is open to the fourth respondent to place all the materials before the third respondent to prove his case that the petitioner is an encroacher. After conducting an enquiry by affording an opportunity of personal hearing to the petitioner and the fourth respondent, the third respondent shall pass a speaking order on merits and in accordance with law not later than 06.08.2021. No costs. Consequently,



connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Crl)

// True Copy //

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Sub Assistant Registrar(CS)

RM

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The District Collector,
Office of District Collector,
Sivagangai District,
Sivagangai.

2.The Tahsildar,
Thirupathur Tashildar Office,
Thirupathur Taluk,
Sivagangai District.

3.The Deputy Tahsildar,
Thirupathur Taluk,
Sivagangai District.

+1 CC to M/s.SPL GP (SR-23185[F] dated 19/07/2021)

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and
W.M.P (MD) No.9339 of 2021
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RK (23.07.2021) 3P 5C