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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2022

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THE HONOURABLE MR.JUSTICE T.RAJA

and

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

W.P.No.4323 of 2022

and

W.M.P.Nos.4434, 4436 and 4437 of 2022

M.Tharabai

... Petitioner

vs

1. The State of Tamil Nadu,
Rep. By its
The Commissioner of Land Administration,
Ezhilagam, Chennai.
2. The District Collector,
Thiruppattur District,
Thiruppattur.
3. The District Revenue Officer,
Thiruppattur District,
Thiruppattur.
4. The Revenue Divisional Officer,
Vaniyambadi Division,
Vaniyambadi,
Thiruppattur District.
5. The Tahsildar,
Ambur Taluk,
Ambur.
6. The Junior Engineer,
Tamil Nadu Electricity Board,
Kailasagiri,
Thiruppattur District.
7. The Assistant Engineer,
Tamil Nadu Electricity Board,
Pernambut,
Vellore District.

... Respondents



Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for records of fifth respondent's impugned notice dated 07.01.2022 issued under Section 7 of Tamil Nadu Land Encroachment Act, 1905 for property in S.No.359/2 and S.No.359/3 measuring total extent of 43 cents situated at Kailasagiri Village, Ambur Taluk, Thirupattur District and quash the same.

For Petitioner : Mr.R.Govindasamy
For Respondents 1 to 5 : Mr.A.Selvendran
Special Government Pleader
For Respondents 6 & 7 : Mr.L.Jaivenkatesh
Standing Counsel

ORDER

[Order of this Court was delivered by T.RAJA, J.]

Mrs.M.Tharabai, W/o.Mohanavelu, residing at No.4/70, Panangattur Village, Neriampattu Post, Ambur Taluk, Thirupattur District, has come to this Court challenging the impugned notice dated 07.01.2022 issued under Section 7 of Tamil Nadu Land Encroachment Act, 1905 by the Tahsildar, Ambur Taluk/the fifth respondent herein in respect of land in S.No.359/2 and S.No.359/3 measuring 43 cents situated at Kailasagiri Village, Ambur Taluk, Thirupattur District.

2.Mr.R.Govindasamy, learned Counsel for the petitioner would submit that the Government of Tamil Nadu while introducing a scheme called "Landless Agricultural Family Land Assignment Special Scheme 2006" providing two acres of land to the poor and downtrodden agricultural people, passed Government Order vide G.O.No.396, Revenue [LD 3(2)] Department, dated 23.06.2006. While implementing the said Government Order, the Government had assigned 6.5 ares in Survey No.359/2 and 11.0 ares in Survey No.359/3 to the petitioner totally 43 cents have been assigned to the petitioner at Kailasagiri Village, Ambur Taluk, Vellore District as per the assessment order dated 15.12.2006 bearing No.183/1416. That shows that the petitioner is a landless agriculturist and she is fully eligible to get the assignment of two acres of land under the said scheme. While the petitioner was enjoying the land, some unscrupulous persons having vengeance against the petitioner gave a frivolous and false complaint. On the basis of the complaint, an enquiry was held and Sub Collector, Thirupattur, has cancelled the assignment patta without even issuing notice to her and without holding enquiry. Aggrieved thereby, the petitioner came to this Court



with W.P.No.23502 of 2014 on the ground that the order passed by the Sub-Collector, Thiruppattur was in violation of the principles of natural justice. This Court, after appreciating the fact that the impugned order therein was passed in violation of principles of natural justice, set aside the same and remitted the matter back to the same authority to hear the petitioner and pass orders on merits. When the matter was remitted back to Sub Collector, Thiruppattur, Vellore District, due to trifurcation of Vellore District, the jurisdiction went to Revenue Divisional Officer, Vaniyampadi, Thiruppattur District. But due to COVID-19 pandemic situation, the petitioner, aged about 60 years, was unable to appear before the authority. Therefore, she sought four weeks time. But, the petitioner was granted only a week's time and therefore, the petitioner was unable to appear before the authority due to COVID-19 pandemic situation and the Revenue Divisional Officer, Vaniyampadi, Tiruppattur District, passed a wrong order again without giving reasonable opportunity to the petitioner. As against which, the petitioner went before District Revenue Officer who had also confirmed the order passed by his subordinates and refused to consider the case on merits. Therefore, now the petitioner has filed appeal before the Commissioner of Land Administration under Section 15 of the Revenue Standing Order. When the petitioner filed Statutory Appeal before the first respondent, during the pendency of the said appeal, the Tahsildar has issued notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, which is not legally maintainable. In support of his contention, the learned Counsel for the petitioner relied on an unreported judgment of the Division Bench of this Court in W.P.Nos.17785 and 17786 of 2014, dated 17.09.2014 [Dr.G.Viswanathan -vs- State of Tamil Nadu] wherein this Court has held that when the appeal is pending for consideration any notice issued under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 is not legally well. Again in yet another unreported judgment of the Division Bench of this Court in W.P.Nos.22639 to 22641 of 2017, dated 24.08.2017 [D.Dhanavel -vs- The District Collector] this Court also reiterated the principle that no notice under under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, can be issued when appeal is pending and no action can be taken by the lower authorities.

3.At this stage, Mr.A.Selvendran, learned Special Government Pleader appearing for the respondents 1 to 5, on written instructions, submitted that the Tahisldar has sent a letter to him stating that he would not take any action till the disposal of the appeal pending before the first respondent.

4.Considering the fact that when the appeal filed by the petitioner is pending before the first respondent, the impugned



notice dated 07.01.2022 issued by the Tahsildar, Ambur Taluk/fifth respondent herein is not legally sustainable in law and hence, the same is set aside. The Writ Petition is allowed. The first respondent is directed to dispose of the revision filed by the petitioner as expeditiously as possible. Since the electricity service connection to the community hall has been disconnected, on making appropriate application by the petitioner to the Electricity Board, shall be restored of forthwith, which is subject to the outcome of the appeal pending before the first respondent. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

srm

To

1. The Commissioner of Land Administration,
Ezhilagam,
Chennai.
2. The District Collector,
Thiruppattur District,
Thiruppattur.
3. The District Revenue Officer,
Thiruppattur District,
Thiruppattur.
4. The Revenue Divisional Officer,
Vaniyambadi Division,
Vaniyambadi,
Thiruppattur District.
5. The Tahsildar,
Ambur Taluk,
Ambur.
6. The Junior Engineer,
Tamil Nadu Electricity Board,
Kailasagiri,
Thiruppattur District.



7. The Assistant Engineer,
Tamil Nadu Electricity Board,
Pernambut,
Vellore District.

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+1cc to M/s.R.Govindasamy, Advocate, S.R.No.13588

+1cc to M/s.L.Jai Venkatesh, Advocate, S.R.No.13640

+1cc to the Government Pleader, S.R.No.14190

W.P.No.4323 of 2022

PMK (CO)
SU (28/03/2022)
RLP (12/04/2022)