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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2022

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

AND

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

W.P.No.25443 of 2021

in

W.M.P.No.26880 of 2021

K.Pattammal

...Petitioner

vs

1. The Government of Tamil Nadu
represented by its Secretary,
Municipal (Local) Administration Department,
Fort St. George,
Chennai - 600 009.

2. The Municipal Commissioner,
Cuddalore Municipality,
Cuddalore District.

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a writ of certiorari calling for the records relating to impugned Notice dated 08.10.2021 under Section 181 and 362 of the Tamil Nadu District Municipality Act bearing Na.Ka.No.6322/2014/F-1 passed by the second respondent and quash the same.

For Petitioner : Mr.N.Mahendra Babu

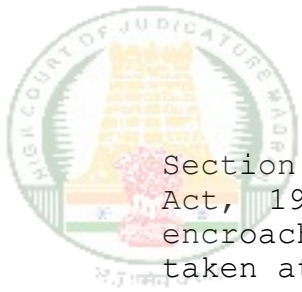
For Respondent 1 : Mr.K.V.Sajeev Kumar,
Special Government Pleader

For Respondent 2 : Mr.P.Srinivas
Standing Counsel

ORDER

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

Mrs.K.Pattammal, the petitioner herein, has brought this Writ Petition challenging the correctness of the impugned notice dated 08.10.2021 issued by the Municipal Commissioner, Cuddalore Municipality, Cuddalore District/second respondent herein under



Section 182(1) and 362 of Tamil Nadu District Municipalities Act, 1920 calling the petitioner as encroacher to remove the encroachment within 15 days time, failing which action would be taken at her cost.

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2. Learned counsel for the petitioner submitted that the petitioner is a resident of No.63, Bagavathi Amman Koil Street, VI Cross Street, Vilva Nagar, Pudu Colony, Cuddalore and has been living for the past forty years, after obtaining electricity service connection and water connection from the concerned authorities. It is also submitted that the petitioner is a widow. Even the Election Commission of India also issued Voters Identity Card in her favour and Aadhaar Card also stands in her name. While so, the place in question viz., Vilvaraya Natham being a natham earmarked for the residence of socially backward people, she has been living there which is adjacent to Tamil Nadu Housing Board Tenements. Therefore, she cannot be called as an encroacher. Moreover, the place in question is a house site meant for the downtrodden community because the word 'Natham' also shows that it is a house site area according to the Revenue Records. While so, the petitioner has paid land tax, property tax and water tax to the second respondent till date and there were no arrears of tax. Moreover, she has also applied for issuance of patta for the said property before the Tahsildar, Cuddalore and before the District Collector, Cuddalore District and her request for issuance of patta is pending. Learned Counsel further submitted that for issuance of free house site patta to an extent of 3 cents each to the houseless persons, the State Government have issued G.O.Ms.No.854, Revenue Department, dated 30.12.2006, G.O.Ms.No.36, Revenue Department, dated 23.01.2008 and G.O.Ms.No.43, Revenue Department, dated 29.01.2010. When the Government have issued the aforementioned Government Orders from time to time for grant of free house site patta to the occupants of the Government land on the ground that if a person has proved that he has been there for more than five years. In such circumstances, the second respondent cannot call the petitioner as encroacher and further direct her to get vacated, as the petitioner herein has been residing in the said place for more than forty years and she is entitled to be granted free house site patta as per the abovesaid Government Orders. Further, the learned Counsel for the petitioner by referring to Section 182 (1) of the Tamil Nadu District Municipalities Act, 1920 argued that the Executive Authority may by notice ask the owner or occupier of any premises to remove any encroachment or obstruction situated in any street. But Section 362 ought not to have been invoked by the second respondent as it is in no way connected to the petitioner's case because they totally stand in a different situation. Again referring to Section 362, it was argued that Section 362 prohibits any unauthorised dealings with



public place or materials. Therefore, Section 362 cannot be applied to the case of the petitioner. Arguing further, he pleaded that Section 362 says that no person shall, without any authority, remove earth, sand or other materials or deposit any matter or make any encroachment in any way obstructing the land vested with the Municipal Council or river, canal, back-water or water course or in any way obstructing the same. Therefore, the notice calling upon the petitioner to remove the encroachment under Section 182(1) and again prohibiting the petitioner from staying in the place in question as though she has encroached ought not to have issued under Section 362 of the Act. Continuing his argument, the learned Counsel for the petitioner would submit that when the second respondent has filed the counter affidavit along with a copy of the Town Survey Register wherein column 2 shows Survey No.4353 whereas column Nos.6 and 7 would show that the land in question is a Government Poramboke land. Therefore, when the land in question occupied by the petitioner is a Government Poramboke land, the second respondent Municipal Commissioner who has no authority whatsoever on the Government Poramboke land, cannot issue the impugned notice because the land does not belong to the second respondent. Therefore, the impugned order has to be quashed as there is no power or authority vested with the second respondent to issue the impugned notice.

3.Again referring to a judgment of this Court in the case of U.Angamuthu -vs- Commissioner, Tiruchengode Municipality reported in (2006) 4 MLJ 517 he further argued that this Court while considering a similar situation has held that if the property in occupation of the private parties is classified as 'Government Poramboke land' then the Municipal Authorities have no jurisdiction to order eviction. In the case on hand, even as per the record produced by the second respondent, the land in question stated to have been encroached by the petitioner is only a Government poramboke land. Therefore, the second respondent Municipal Commissioner, Cuddalore Municipality having not vested with any power or authority to remove any encroachment from the Government land ought not to have issued the impugned notification. On this basis, he prayed for allowing this Writ Petition.

4.A detailed counter affidavit has been filed by the Municipal Commissioner, Cuddalore Municipality, Cuddalore District, the second respondent herein refuting the averments made in the Writ Petition.

5.Mr.P.Srinivas, learned Standing Counsel appearing for the second respondent opposing the above prayer replied that the petitioner has no manner of right to be in occupation of the land in question, namely, Town Survey No.4353, Ward No.7, Block



No.61 as it is a street even as per the survey records. When the Town Survey Register filed before this Court clearly shows that the land in question covered in Survey No.4353 is a Government Poramboke that has been presently used as a road for public purpose that clearly shows that the petitioner is an encroacher on the road without any semblance of right. Moreover, when the petitioner occupied an extent of 3.0 x 4.0 Metres by putting up a thatched structure, the same was noticed by the residents of the area and they immediately informed this respondent about the encroachment and one M.Mayavan has also filed a Writ Petition in W.P.No.44451 of 2015 under Article 226 of the Constitution of India for issuance of Writ of Mandamus directing the respondents 1 to 5 therein to remove the illegal construction made by the sixth respondent/the petitioner herein. As the petitioner has encroached the Government property in the common passage, this Court by order dated 02.01.2017 considering the response from the respondents 1 to 5 including the Commissioner of Municipal Administration, who was impleaded as fifth respondent, directed the respondents 2 and 3 to look into the representation dated 16.07.2016 made by M.Mayavan/petitioner therein with a further direction to take action in accordance with law, after notice to all concerned. Therefore, it is not the case of the second respondent that only on noticing the encroachment made by the petitioner, the second respondent has taken up the matter suo motu. In an effort to comply with the order dated 02.01.2017 passed in the said Writ Petition, when the second respondent made an inspection, the petitioner was found to be an encroacher in Survey No.4353. Therefore, this impugned notice has been issued. As the revenue record clearly shows that the land occupied by the petitioner is a Government Poramboke and the same has been used as a public road, the petitioner has no manner of right to encroach the public road. When there is no permission or licence was given by the respondent herein, being the owner of the land, the petitioner is a rank trespasser and encroacher, causing detriment to the public. Therefore, the petitioner should have been removed and she ought not to have come to this court.

6.It is useful to extract Section 182 of the Tamil Nadu District Municipalities Act, 1920 which reads as under:

"182. Removal of encroachments.- (1) The Executive Authority may, by notice, require the owner or occupier of any premises to remove or alter any projection, encroachment or obstruction (other than a door, gate, bar or ground-floor window) situated against or in front of such premises and in or over any street.

(2) If the owner or occupier of the premises



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proves that any such projection, encroachment or obstruction has existed for a period sufficient under the law of limitation to give any person a prescriptive title thereto or that it was erected or made with the permission or licence of any municipal authority duly empowered in that behalf, and that the period, if any, for which the permission or licence is valid has not expired, the Municipal Council shall make reasonable compensation to every person who suffers damage by the removal or alteration of the same."

7. We find merits on the submission made by the learned Counsel for the second respondent. The petitioner would admit that she is in occupation of the land in Survey No.4353 which is shown as Government Poramboke and in turn being used as a road by all the public. Therefore, the contentions raised by the learned counsel for the petitioner that the respondent cannot apply Section 182(1) and 362 of the Act, have no legs to stand. The reason is very simple. A reading of Section 182(1) clearly shows that the Executive Authority may by notice require the owner or occupier of any premises to remove the encroachment or obstruction. In the present case, from the copy of the Town Survey Register which was placed before us, we are able to see that the land in Survey No.4353 is a Government poramboke which has been used as a public road. Therefore, the notice issued under Section 182(1) is legally maintainable. Coming to Section 362 of the Act, the argument advanced by the learned Counsel for the petitioner that it has no nexus to the petitioner's right to continue in the same land also cannot be accepted for the simple reason that when Section 362 prohibits against unauthorised dealings with public place, the second respondent, who is having custody of the public land, as per the copy of the Town Survey Register shown before us, has right to question the encroachment made by the petitioner on the road. Therefore, finding no merit whatsoever in the Writ Petition, the same fails and is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

srm



To

1. The Secretary to Government of Tamil Nadu,
Municipal (Local) Administration Department,
Fort St. George,
Chennai - 600 009.

2. The Municipal Commissioner,
Cuddalore Municipality,
Cuddalore District.

+1cc to Mr.N.Mahendra Babu, Advocate, S.R.No.8713

W.P.No.25443 of 2021

MT (CO)
RGA (06/04/2022)