



W.P.(MD)No.18227 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.08.2022

CORAM:

THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**
and
THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

W.P.(MD)No.18227 of 2022
and W.M.P.(MD) No.13299 of 2022

D.Papa

... Petitioner

Vs.

1.The District Collector,
Theni District,
Theni.

2.The Tahsildar,
Aandipatti, Theni.

3.The Block Development Officer,
Aandipatti, Theni.

4.President,
Rajathani Post,
Aandipatti Taluk,
Theni District.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the impugned notice in Na.Ka.No.1/2022, dated 01.08.2022, issued by the 4th respondent herein and quash the same as illegal.

For Petitioner

: Mr.S.Sundaravadivel



W.P.(MD)No.18227 of 2022

For Respondents

: Mr.J.Ashok
Additional Government Pleader

WEB COPY

ORDER

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

Challenging the order, directing the petitioner to remove the encroachment in the waterbody known as “Ooliyakaran Oorani”, comprised in S.No.50/5 in Veerachinnampuram, Rajadhani Village Panchayat, which come under Aandipatti Union, the above Writ Petition has been filed.

2. Heard Mr.S.Sundaravadivel, learned counsel for the petitioner and Mr.J.Ashok, learned Additional Government Pleader, appearing for the respondents. By consent of both parties, this Writ Petition is taken up for final disposal at the stage of admission itself.

3. It is the case of the petitioner that she is in possession and enjoyment of land from her father's time. Based on the enjoyment of the petitioner for more than 30 years, the petitioner claims possessory right in respect of the waterbody,



W.P.(MD)No.18227 of 2022

which is classified as “Oorani” as per revenue records. It is also the case of the petitioner that she had planted fruit bearing trees and other valuable trees and in enjoyment of the trees for more than 30 – 40 years. It is stated that more than 80 trees are standing in an extent of 1 acre and 57 cents in S.No.50/5. The petitioner further claims that she is reaping the produce from the trees standing in the property in dispute and she has submitted a representation dated 06.10.2008, seeking assignment of land in her favour. The petitioner also refers to a Writ Petition filed by her in W.P.(MD) No. 1373 of 2010 before this Court and it was disposed of by directing the second respondent herein to dispose of the representation seeking patta in favour of the petitioner.

4. It is the grievance of the petitioner that the respondents without considering the representation of the petitioner for grant of patta to the whole property has initiated action for removal of encroachment. Since the impugned order directs the petitioner to vacate the encroachment is without notice to the petitioner to show cause, the petitioner challenges the order of eviction on the ground that it is in violation of principles of natural justice.



W.P.(MD)No.18227 of 2022

5. This Court and the Hon'ble Supreme Court repeatedly reiterated the need to protect the waterbodies for future generation. In this case, the petitioner has not produced even a scrap of paper to show her title or right, which can be recognized as lawful. Merely because the petitioner and her father are in enjoyment of the land by planting trees, the petitioner cannot assume that the land should be treated as a land assigned to her by way of grant. Though the petitioner states that several other persons have also encroached nearby land, that cannot be a ground to sustain the plea of the petitioner.

6. Further, this Court finds that the impugned order has been passed by the local body i.e., President of the Panchayat. This Court has earlier in few judgments observed that the local body or Block Development Officer has no power to initiate action for removal of encroachment in waterbodies as the provisions of Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 are not applicable to the tanks that are vested with the local bodies. In such instances, where the tanks are under the control of local bodies, the Revenue Department is required to take action to remove the encroachments under the provisions of Tamil Nadu Land Encroachment Act, 1905.



W.P.(MD)No.18227 of 2022

7. In that view of the position, this Court though allow this Writ Petition by setting aside the order impugned in the writ petition, directs the Tahsildar, Aandipatti, Theni District - 2nd respondent herein to initiate action for the removal of the encroachment by taking action under the provisions of the Tamil Nadu Land Encroachment Act, 1905. The Second respondent shall also issue notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 within a period of two weeks from the date of receipt of a copy of this order and after hearing the petitioner and considering the representation / objections of the petitioner in response to the show cause notice, the second respondent shall pass appropriate orders in accordance with law within a period of two weeks from the date of receipt of reply from the petitioner in response to the notice issued under Section 7 of the Tamil Nadu Land Encroachment Act, 1905. It is open to respondents 3 & 4 to approach this Court in case the encroachment is not removed within a reasonable time. No costs. Consequently, connected Miscellaneous Petition is closed.

[S.S.S.R., J.] [S.S.Y., J.]
12.08.2022

Index : Yes / No
sj



W.P.(MD)No.18227 of 2022

S.S.SUNDAR, J.

and

S.SRIMATHY, J.

sj

To

- 1.The District Collector,
Theni District,
Theni.
- 2.The Tahsildar,
Aandipatti, Theni.
- 3.The Block Development Officer,
Aandipatti, Theni.
- 4.President,
Rajathani Post,
Aandipatti Taluk,
Theni District.

W.P(MD)No.18227 of 2022

12.08.2022