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WP No.1219 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2023

CORAM

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

WP No.1219 of 2023

Amsarani

... Petitioner

versus

- 1 The District Collector
Cuddalore District
- 2 The Sub Collector,
Vridhachalam, Cuddalore District.
- 3 The Tahsildar
Vridhachalam, Cuddalore District
- 4 The Municipal Commissioner
Vridhachalam Municipality, Vridhachalam,
Cuddalore District. 606 001
- 5 A.Vahith Khan

... Respondents

Prayer: Writ Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records of the 4th respondent in encroachment no.6/22 dated 30.12.2022 quash the same and consequently injunct the respondents from interfering with the peaceful possession and occupation of the lands in T.S.No. 169/170 comprised in new survey No.169 old Survey No. 106/1 part with Municipal Door No.1C of an extent of 642.28 sq.ft in



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Ward E, Block 26, Palakarai Junction Road, Vridhachalam.

For the Petitioner : Mr.G.Surya Narayanan

For the Respondents : Mr.P.Muthukumar,
State Government Pleader,
for respondents 1 to 3

Mr.P.Srinivas,
Standing Counsel,
for the fourth respondent

ORDER

(Made by the Hon'ble Acting Chief Justice)

The petitioner has filed this writ petition challenging the impugned notice dated 30.12.2022 passed by the fourth respondent wherein the petitioner was directed to remove the encroachment. The petitioner also seeks to injunct the respondents from interfering with the peaceful possession and occupation of the lands in T.S.No.169/170 comprised in New Survey No.169, old Survey No.106/1 with Municipal Door No.1C of an extent of 642.28 sq.ft in Ward E, Block 26, Palakarai Junction Road, Vridhachalam.

2. The learned counsel for the petitioner submitted that the petitioner is in peaceful possession and occupation of the above mentioned property. According to the petitioner, it is a joint family property and patta was granted in Patta



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No.2057 and the building thereon was constructed about 25 years ago. The fifth respondent has encroached certain lands in S.No.154 and he has also got patta.

After getting patta, the fifth respondent occupied the land by creating a boundary wall with industrial sheet.

3. It is also the claim of the petitioner that the fourth respondent cannot invoke Section 182 of the Tamil Nadu District Municipalities Act for issuing notice, calling upon the petitioner to remove the encroachment, without properly undertaking a survey. Only on proper survey of the land, if encroachment is found, the petitioner could be directed to remove such encroachment. In the present case, neither proper survey was undertaken nor any order was passed showing the land in question to be encroached by the petitioner. Therefore, on receipt of notice dated 08.06.2022, calling upon the petitioner to remove the encroachment, a detailed representation dated 17.06.2022 was given, requesting the fourth respondent to make proper survey. However, till date, no survey was done. Therefore, it is not open to the respondents to brand the petitioner as an 'encroacher'. Under Section 182 of the Tamil Nadu Municipalities Act, even if the executive authority of the fourth respondent finds that the owner or occupier of the premises has been in encroachment for a sufficient period, the Municipal Council shall make reasonable compensation to every person who suffers damage by the



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removal or alteration of the same.

4. We are unable to agree with the arguments of learned counsel for the petitioner for the simple reason that to receive reasonable compensation, the petitioner has to approach the competent forum and workout his remedy before such forum. Likewise, the impugned notice dated 30.12.2022 also clearly mentions that there is encroachment in S.No.171, Ward-E, Block No.24, to an extent of 6m x 3m; whereas the petitioner's case is that she has been in possession and enjoyment of the land in T.S.No.169/170 comprised in New S.No.169. If that is so, we do not know how the petitioner has come to this Court when the notice has been issued with regard to another survey number, which is in no way connected with the land of the petitioner.

5. The learned counsel for the fourth respondent also submitted that the statement made by the learned counsel for the petitioner before this Court alleging that the fourth respondent has proceeded arbitrarily without conducting any survey is not true because survey was undertaken in the presence of the petitioner. Moreover, this Court has already issued a direction in WP No.25610 of 2021, directing the Municipality Commissioner, Vridhachalam Municipality to



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remove encroachment. Only pursuant to the direction given by this Court to remove the encroachment, action has been taken. Therefore, the respondents are taking action with all seriousness not to cause any damage to anyone, if it is a patta land.

6. Since survey has already been conducted in the presence of the petitioner, we are not inclined to entertain this writ petition. The writ petition fails and the same is dismissed. There will be no order as to costs. WMP No.1259 of 2023 is closed.

(T.R., ACJ.) (D.B.C., J.)
20.01.2023

Index : Yes/No
Neutral Citation : Yes/No
tar

To

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and
D.BHARATHA CHAKRAVARTHY, J.

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