



WEB COPY



WP No.13115 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2023

CORAM

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

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

WP No.13115 of 2023

Parameswari

...

Petitioner

versus

1.The State of Tamil Nadu,
rep. by its Principal Secretary to Government
Revenue and Disaster Management Department
Fort St. Geroge Chennai-9.

2.The District Collector,
Chengalpattu District.

3.The Thasildar
Chengalpattu.

4.The Revenue Inspector
Chengalpattu Taluk,
Chengalpattu.

... Respondents

Prayer: Writ Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the entire records of 2nd respondent impugned proceedings in Na.Ka.9329/2021/ Aa3 dated 22.01.2022 and confirming the order of the 3rd respondent dated 16.07.2021 made under section 6 of the Tamil Nadu Land Encroachment Act 1905 and quash the same and direct the respondents to hand over the disputed land to the petitioner land in S.No.96/10 in Alapakkam village in Meleripakkam Chengalpattu district to an extent of 5 acres.



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Appearance:

Ms. Anita P. Jason, for the petitioner

Mr. P. Muthukumar, State Government Pleader, for the respondents

ORDER

(Made by the Hon'ble Acting Chief Justice)

The petitioner has filed this writ petition seeking to quash the proceedings of the District Collector, Chengalpattu, confirming the order passed by the Tahsildar, Chengalpattu, under Section 6 of the Tamil Nadu Land Encroachment Act, 1905, (for short, 'the Act') and for a consequential direction to the respondents not to disturb the possession of the petitioner.

2. The brief facts leading up to the filing of this writ petition are as follows:

(a) It is the case of the petitioner that her husband was working in the Indian Army as 'sappar'. By proceedings DC1/80 dated 11.09.1970, the Tahsildar, Chengalpattu, assigned land measuring five acres in Alapakkam Village, Meleripakkam, Chengalpattu to her husband and he was carrying on agricultural activities in the said land, after his retirement from military;

(b) While so, the Revenue Divisional Officer, Chengalpattu, cancelled the assignment, vide order dated 13.05.1975, holding



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that the assignment ordered by the Tahsildar, Chengalpattu, deserves cancellation in view of the irregularities found. Subsequently, the petitioner's husband was issued with a notice, calling for inquiry, on 03.08.1975. Though the petitioner's husband participated in the inquiry, no order was passed. Thereafter, petitioner's husband approached the authorities, seeking patta. However, the authorities did not pass any order in his favour. The petitioner's husband died on 06.02.2007 due to ill-health, leaving behind the petitioner and their seven children;

(c) The petitioner received a notice dated 03.07.2021 under Section 7 of the Act from the Revenue Inspector, Chengalpattu Taluk, directing the petitioner to show cause as to why she should not be removed from the encroached land and why the crop on the land should not be forfeited and the building removed under Section 7 of the Act. The petitioner sent a reply stating that she is in occupation of the said land for the past fifty years and that she has developed the waste land into a fertile land with huge investment and continuous efforts;

(d) Pending consideration of the petitioner's reply, notice



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under Section 6 of the Act, dated 16.07.2021, was issued by the Tahsildar, Chengalpattu, directing the petitioner to vacate the land within seven days of receipt of notice and further directed the Chengalpattu Firka Revenue Inspector to protect all objects in the disputed land until receipt of Collector's order;

(e) As against the notice issued by the Tahsildar, the petitioner preferred an appeal before the District Collector, Chengalpattu, and appeared for an inquiry. The District Collector, by order dated 22.01.2022, rejected the appeal preferred by the petitioner. Aggrieved by the order passed by the second respondent, the petitioner preferred a revision before the first respondent on 31.01.2023 and the same is pending;

(f) Seeking to quash the proceedings of the District Collector, Chengalpattu, dated 22.01.2022, the petitioner has filed this writ petition.

3. Learned counsel for the petitioner submitted that the petitioner's husband served in the Indian Army and as a token of appreciation, the subject land was assigned to him by the Tahsildar, Chengalpattu, way back in the year



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1970. The petitioner is under continuous occupation of the land for the past half a century and that her family members have converted the waste land into a fertile land with huge investment and continuous efforts. Therefore, the order passed by the District Collector, should be quashed and the petitioner's continuation in the land should not be disturbed.

4. Mr.P.Muthukumar, learned State Government Pleader, submitted that the petitioner's case has been continuously rejected by the authorities. The initial assignment itself was a flawed one and the authorities have only corrected the illegal order passed. Mere possession of land for a long time will not give any right to the petitioner to be in possession of an encroached land. Mr.P.Muthukumar, fairly submitted that the first respondent may be directed to dispose of the pending appeal.

5. As rightly pointed out by the learned State Government Pleader, mere possession of an encroached land for a long period will not automatically give right to the encroacher to become the owner of the same. The petitioner has lost her appeal before the District Collector. At present, her revision filed under Section 10-A of the Tamil Nadu Land Encroachment Act, 1905, is pending before the Principal Secretary to Government, Revenue and Disaster Management Department, Chennai, the first respondent herein.



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6. Considering the facts and circumstances of the case, the writ petition is disposed of, directing the the Principal Secretary to Government, Revenue and Disaster Management Department, Chennai, to consider and dispose of the revision filed by the petitioner, on merits and in accordance with law, within a period two months from the date of receipt of a copy of this order. There will be no order as to costs. Consequently, WMP Nos.12879 and 12881 of 2023 are closed.

(T.R., ACJ.) (D.B.C., J.)
27.04.2023

Index : Yes/No
Neutral Citation : Yes/No
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To

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