



WEB COPY



WP No.15098 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2023

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Petition No.15098 of 2018
and
WMP No. 17856 of 2018

K. Maniammal

.. Petitioner

Versus

1. The District Collector
Salem Collectorate
Salem.
2. The Appellate Committee
Revenue (LD6 (2) Department
Salem Collectorate, Salem.
3. The Commissioner
Salem Corporation, Salem
4. The Assistant Commissioner
Suramangalam Ward Office
Salem Corporation, Salem

5. S. Seetha

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the second respondent to decide the appeal of petitioner dated 29.01.2018 in a time bound manner without taking any coercive steps based on the order dated 11.01.2018 in N.A.No. K21/ 4595 /2017 passed by the fourth respondent.



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For Petitioner : Mr. S.R. Ramesh
For R1 & R2 : Mr. A. Selvendran
Special Government Pleader
For R3 & R4 : Ms. K. Bhuvaneswari
Standing Counsel

ORDER

[Order of the Court was made by R. MAHADEVAN, J]

This writ petition has been filed by the petitioner seeking to issue a Writ of Mandamus directing the second respondent to decide the appeal dated 29.01.2018 preferred by her in a time bound manner without taking any coercive steps based on the order dated 11.01.2018 in N.A.No.K21/4595/2017 passed by the fourth respondent.

2. In the affidavit filed in support of the writ petition, it is stated by the petitioner that she purchased the land comprised in Survey No.2/2 corresponding to R.S. No. 26/1B (Old Survey No.26/1) at Kasakaranur, Jagir Bommi Naickenpatti, Jagir Ammapalayam Village, Salem together with a pathway measuring 12" X 60" adjoining Salem Junction Main Road in Meyanoor Village. The fifth respondent is the owner of the adjacent land on the Eastern side in T.S. No. 3 corresponding to Old Survey No.26/1C and



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26/1A part. According to the petitioner, one Mr. Kuppusamy Pillai was the owner of the larger extent of lands, from whom the petitioner as well as the fifth respondent have purchased the respective lands. While so, a dispute had arisen between the petitioner and her neighbour, the fifth respondent with respect to the right of draining the water in the drainage on the Eastern side as well as in using the 12" private road. In this context, the fifth respondent filed a suit in O.S. No. 214 of 2002 on the file of I Additional District Munsif, Salem against the petitioner and her husband contending that the petitioner has no right to drain water in the drainage in question or to use the 12 feet private road. It was also contended in the suit that the petitioner constructed a compound wall measuring 2 feet height and 20 feet wide wall on the Eastern boundary where the drainage inlet is set up, to which she has no right. On notice, the petitioner filed her written statement in the suit, besides she had also approached the competent authority who surveyed and measured the property in dispute. It is stated that the survey disclosed that the petitioner had constructed the compound wall within her boundary on the eastern side of her property and the question of encroaching into the land of the fifth respondent will not arise.

3. It is further stated by the petitioner that the suit filed by the fifth



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respondent in O.S. No. 214 of 2002 was dismissed *inter alia* with an observation that the petitioner has to remove half feet wide wall in the land in Survey No.26/2A on the Northern-Eastern corner, which the petitioner complied with. However, the fifth respondent filed A.S. No. 94 of 2003 in which an Advocate Commissioner was appointed in I.A. No. 144 of 2003 in A.S. No. 94 of 2003 dated 30.12.2003. Ultimately, on 07.09.2017, the first appeal was allowed against which the petitioner has filed a Second Appeal before this Court and it is pending. However, by placing reliance on the judgment and decree passed in the First Appeal, the fifth respondent submitted a representation dated 04.04.2017 to the Tahsildar, Salem West seeking to demolish the compound wall. Immediately thereafter, the fifth respondent also filed WP No. 17089 of 2017 before this Court for a Mandamus directing the respondents therein to consider her representation and to remove the encroachments caused by the petitioner herein. By an order dated 06.07.2017, this Court directed the respondents therein to consider the representation dated 04.04.2017 of the petitioner therein (fifth respondent herein) and pass orders on merits within a period of eight weeks. On the basis of the said order, without affording any opportunity to the petitioner, a notice dated 01.09.2017 was issued to the petitioner by the fourth respondent herein, calling upon her to demolish the compound wall constructed by her on the Eastern side of her



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property. Aggrieved by the notice dated 01.09.2017, the petitioner has filed WP No. 24441 of 2017 before this Court. By an order dated 12.09.2017, this Court disposed of the Writ Petition with a direction to the petitioner to treat the notice dated 01.09.2017 as a show cause notice, submit her explanation and on receipt of the same, directed the fourth respondent to consider it and pass orders on merits. Accordingly, the petitioner submitted her explanation on 09.10.2017 stating that the compound wall was constructed within the boundaries of the property conveyed to her by her vendor. However, the fourth respondent, without considering the same, has passed an order dated 11.01.2018 directing the petitioner to remove the compound wall. Aggrieved by the order dated 11.01.2018 of the fourth respondent, the petitioner has preferred an appeal before the Second Respondent on 29.01.2018 and the appeal is still pending. During the pendency of the appeal, since there is a threat of demolition of the compound wall, the petitioner has filed this writ petition.

4. When this writ petition was listed for hearing on 29.06.2018, this Court taking note of the pendency of the statutory appeal before the second respondent, directed the fourth respondent not to proceed with the demolition of the compound wall.



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5. We have heard the learned counsel for the petitioner, the learned Special Government Pleader for the respondents 1 and 2 as well as the learned Standing counsel appearing for the third and fourth respondents.

6. The learned counsel for the petitioner submitted that the appeal preferred by the petitioner, against the order dated 11.01.2018 of the fourth respondent, is pending on the file of the second respondent. He only prayed that appropriate direction may be issued to the second respondent to take up the appeal and dispose it on merits and in accordance with law, after affording opportunity to the petitioner, within a time frame to be stipulated by this Court

7. The learned Special Government Pleader appearing for the respondents 1 and 2 has no serious objection for issuing such a direction to the second respondent to dispose of the appeal within a time frame.

8. Considering the limited nature of the relief sought for, without going into the merits of the case, we direct the second respondent to consider the petitioner's appeal dated 29.01.2018 filed against the order dated 11.01.2018 of the fourth respondent and pass appropriate orders, on merits and in accordance with law, after affording an opportunity of hearing to the



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petitioner as well as the fifth respondent herein and others concerned, within a period of eight weeks from the date of receipt of a copy of this order.

9. With the aforesaid direction, this writ petition is disposed of. No costs. Consequently, WMP No. 17856 of 2018 is closed.

[R.M.D., J] [M.S.Q., J]
09.02.2023

Index : Yes / No
Internet : Yes / No
av/rsh

To

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