



WEB COPY



W.P.No.33375 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2023

CORAM

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

W.P. No. 33375 of 2023
and
WMP.No.33100 of 2023

Deivamanohari
Petitioner

..

Versus

1. The Government of Tamil Nadu
Rep.by its Secretary,
Municipal Administration and Water Supply Department,
Secretariat, Fort St.George,
Chennai - 600 009.
2. The Secretary to Government of Tamil Nadu,
Revenue Department,
Secretariat, Fort St. George,
Chennai - 600 009.
3. The Tashildar,
Dharapuram Taluk,
Tiruppur District.
4. The Commissioner,
Dharapuram Municipality,
Dharapuram, Tiruppur District.

.. Respondents



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Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of order in Na.Ka.No.3260/2016/F1 dated 03.10.2023 on the file of fourth respondent herein and quash the same and consequently direct the respondent not to disturb the petitioner's house at Door No.58, Kottapulipalayam Road, Dharapuram Town of Tiruppur District till the disposal of recommendation forwarded by fourth respondent to the respondents 1 and 2 vide his resolution No.1174 dated 15.06.2009 recommending to grant patta to the petitioner's house.

For Petitioner : Mr.N.Ponraj
For R1 to R3 : Mrs.S.Anitha,
Special Government Pleader
For R4 : Mr.P.Srinivas,
Standing Counsel

ORDER

(Order of the Court was made by **R. MAHADEVAN, J.**)

The prayer made in this writ petition is to issue a writ of certiorarified mandamus, to call for the records pertaining to the notice dated 03.10.2023 issued by the fourth respondent, quash the same and consequently direct the respondents not to disturb the petitioner's house at Door No.58, Kottapulipalayam Road, Dharapuram Town of Tiruppur District till the



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disposal of the recommendation forwarded by the fourth respondent to the respondents 1 and 2 *vide* Resolution No.1174 dated 15.06.2009 recommending to grant patta to the petitioner's house.

2.It is stated in the affidavit filed in support of this writ petition by the petitioner that she is living in the subject land for more than 60 years by paying all the taxes and charges, including house tax, water tax etc. It is further stated that there is a 60 feet road viz., Kottapulipalayam Road starting from Udumalpet Road and going beyond after crossing the Bye-Pass Road. The said Kottapulipalayam Road is having length of about 1 Km upto Bye-Pass Road from its starting point and having houses and shops on both sides. The petitioner's house is in line within the patta houses and it is situated within 100 metres from the starting point of the above said road and the width of the said road is widest in front of the petitioner's house than in front of other patta houses and hence it is not causing any hindrance to the movement of public as well as traffic, according to the petitioner. It is further stated that in the counter affidavit in W.P.No.9584 of 2018 filed by the petitioner's father, the fourth respondent has stated that the said road is having varying widths and in the wider portion of the road, the petitioner's residence has been set up. It is also stated that the petitioner's family is in possession and enjoyment of the subject



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land for a long period and hence, the father of the petitioner has approached the respondent authorities and requested to issue patta. Pursuant to the same, the fourth respondent passed Resolution No.1174 dated 15.06.2009 expressing no objection to give patta to the petitioner's house. While that being so, the fourth respondent passed an order dated 11.11.2016 directing the petitioner's father to remove the house. Feeling aggrieved, the petitioner's father preferred W.P. No.43647 of 2016 before this Court and the same was disposed of by granting liberty to the petitioner's father to work out his remedy for getting compensation or patta with a further direction to the authorities to carry out survey of the said road and the petitioner's house. Thereafter, the petitioner's father gave applications for both compensation as well as patta to the authorities, but without considering the applications and without carrying out the survey as directed, the fourth respondent took steps to demolish the house of the petitioner. Feeling aggrieved, the petitioner's father has again filed a writ petition in W.P.No.9075 of 2018 challenging the said eviction proceedings. Thereafter, the petitioner's father died on 31.05.2021 and the petitioner herein got impleaded in the said writ petition. This Court by order dated 05.04.2023 disposed of the writ petition, directing the respondent authorities to consider the petitioner's representation dated 25.01.2018, within a period of eight weeks. Pursuant to the order dated 05.04.2023, the fourth respondent issued a



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notice dated 03.10.2023 stating that the land in which the petitioner's house is situated is a poramboke land classified as 'Road' and being used by the public for transport and there is no possibility for granting patta since the land being a Sarkar Road Poramboke and accordingly, directed the petitioner to remove the encroachment. The said notice has been issued relying upon the order of the third respondent dated 02.08.2023 rejecting the applications made on the side of the petitioner for patta. Challenging the notice issued by the fourth respondent, the petitioner has come up with this writ petition.

3. According to the learned counsel for the petitioner, the impugned notice is violative of the orders passed by this Court in the earlier writ petitions. It is further submitted that the matter of issuing patta is pending before the first and second respondents following the Resolution of the fourth respondent, but the third respondent has passed an order usurping the power of the Government without any special authorization based on which the impugned notice has been issued. Copy of the said order passed by the third respondent has not been given to the petitioner. Since the impugned notice is based on the order passed by the third respondent dated 02.08.2023 which order has been passed without any special authorization or powers, the impugned order is nothing but against the principles enshrined in Articles 14, 21 and 300-A of the



Constitution of India. Finally submitting that the authorities have failed to consider the fact that the petitioner's family is in lawful possession and enjoyment of the subject property for more than 60 years, the learned counsel prayed for setting aside the impugned notice and to grant the relief as prayed for.

4. Refuting the submissions of the learned counsel for the petitioner, Mr.S.Anitha, learned Special Government Pleader who took notice for the respondents 1 to 3 and Mr.P.Srinivas, who took notice for the fourth respondent, have submitted that the land in question is classified as “Sarkar Poramboke” and hence, the impugned notice is in accordance with law. However, it is submitted that if any representation of the petitioner is pending before the respondents, the same would be considered on its own merits.

5. Heard the learned counsel on either side and perused the records carefully.

6. The petitioner has stated that her father filed W.P.No.9584 of 2018 before this Court. In the counter filed for the said case, the fourth respondent has stated that the petitioner's residence has been set up at the wider portion of



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the road. It is also stated that her father filed W.P.No.9075 of 2018 challenging the eviction proceedings and this Court by order dated 05.04.2023 disposed of the writ petition, directing the respondent authorities to consider the petitioner's representation dated 25.01.2018. The petitioner has also stated that the order passed by the third respondent dated 02.08.2023 which has been relied upon by the fourth respondent in issuing the impugned notice, has not been brought to her knowledge. Now, a copy of the said order has been produced by the learned Special Government Pleader, in which, referring to the orders passed in W.P.Nos.9584 of 2018 and 9075 of 2018, it has been clearly stated that on consideration of the documents submitted on the side of the petitioner, evidences and village records, it has been clearly established that the subject land where the petitioner's house is situated is classified as 'Road' and it is a 'Sarkar Poramboke' and hence, there is no scope for issuing patta for the said house, as the same has been built on the disputed road portion.

7.At this juncture, the learned counsel for the petitioner submitted that liberty may be given to the petitioner to file an application before the authorities for getting compensation, as directed by this Court in the earlier writ petition in W.P.No.43647 of 2016 filed by the petitioner's father and on such filing, the respondent authorities may be directed to consider the



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application and pass appropriate orders, on merits and in accordance with law, for which, the learned Special Government Pleader appearing for the respondent authorities has no serious objection.

8.In view of the above, this Court directs the petitioner to file an application seeking compensation along with a copy of this order to the respondents within a period of two weeks from the date of receipt of a copy of this order. On making of such application, the respondents shall consider the same and pass appropriate orders, on merits and in accordance with law, after affording an opportunity of hearing to the petitioner, within a period of four weeks, thereafter.

9.The writ petition is disposed of accordingly. No costs. Consequently, the connected Miscellaneous petition is closed.

(R.M.D., J.) (M.S.Q., J.)
28.11.2023

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Internet : Yes / No

Index : Yes/No



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Chennai - 600 009.
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Revenue Department,
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