



W.P.No.28967 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2023

CORAM :

**THE HON'BLE MR. JUSTICE R. MAHADEVAN
AND
THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ**

**W.P.No.28967 of 2018 &
W.M.P.No.33858 of 2018**

B.Lakshmi

... Petitioner

Vs.

1.The District Collector,
Thiruvannamalai District,
Thiruvannamalai.

2.The Commissioner,
Arani Municipality,
Thiruvannamalai District.

3.The Tahsildar,
Arani Taluk Office,
Thiruvannamalai District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorarified Mandamus, to call for the records of the second respondent relating to the impugned order in Na.Ka.No.2142/F1/2018, dated 15.10.2018 and quash the same as illegal and arbitrary and consequently direct the respondents not to disturb the petitioner's peaceful possession.

For petitioner : Mr.B.S.Ramesh

For respondents : Mr.A.Selvendran
Special Government Pleader



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ORDER

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

According to the petitioner, she has been living in the land situated at Ward No.C, Block No.1, No.15/17, Baskar Road, Arani Town (hereinafter shortly referred to as "the subject property") for more than 25 years. She would further state that she and her husband were in possession of the said property along with their three daughters by constructing a small house. While so, her husband died due to harness and thereafter the petitioner has been living with her younger daughter, ever since her first two daughters got married. It is also averred that the petitioner obtained electricity service connection for the subject property and has been paying the charges promptly. She has also applied patta enclosing the required documents, but the same has not been considered by the respondent authorities, till date.

2.It is the further case of the petitioner that the Tahsildar, Arani Taluk, issued a notice dated 21.04.2008 under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, certifying her possession in the subject property. However, during the pendency of the petitioner's application seeking patta, the second respondent has issued the impugned notice dated 15.10.2018 under Sections 142, 173, 180A, 182, 183, 186 and 313 of the Tamil Nadu District Municipalities Act, 1920, and the Rules framed thereunder, directing her to vacate



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the subject property within 24 hours, failing which, appropriate legal action would be initiated against her. Feeling aggrieved, the petitioner has come up with this writ petition for issuance of a writ of Certiorarified Mandamus to quash the said notice dated 15.10.2018 and direct the respondents not to disturb her peaceful possession in the subject property.

3.The learned counsel for the petitioner would submit that without properly considering the petitioner's continuous, long and uninterrupted possession and enjoyment of the subject property and also without providing any opportunity to putforth her case, she was directed to dispossess the subject property, by the impugned notice dated 15.10.2018, which is arbitrary, illegal and against the principles of natural justice. It is also submitted that the petitioner is living in poor economic background and she is depending upon the income of her daughter. It is further submitted that many families in that area have constructed houses and have been living in that area, but, the second respondent directed the petitioner alone to vacate the subject property, despite the fact that her application seeking patta is pending. Stating so, the learned counsel prayed this Court for passing appropriate orders in this writ petition.

4.Per contra, the learned Special Government Pleader appearing for the respondents would submit that the petitioner is an encroacher and hence, the



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authorities have taken eviction proceedings in accordance with the Tamil Nadu District Municipalities Act, 1920, by issuing notice dated 15.10.2018, which is impugned in this writ petition. However, the learned counsel submitted that the authorities would pass appropriate orders and proceed with the further action of removal of encroachment, if any, after the petitioner's application seeking patta in respect of the subject property is disposed of, on merits.

5.Heard the learned counsel on either side and also perused the materials available on record.

6.The challenge made in this writ petition is to the notice dated 15.10.2018 issued by the second respondent, thereby directing the petitioner to vacate the subject property. Aggrieved by the same, she is before this court with this writ petition to quash the same and direct the respondents not to disturb her peaceful possession of the subject property.

7.The primordial contention of the learned counsel for the petitioner is that the petitioner and her family have been in possession and enjoyment of the subject property for more than 25 years, as evident from the earlier notice dated 21.04.2008 issued by the Tahsildar, Arani Taluk; and that, the petitioner has already made an application for issuance of patta in respect of the subject



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property and the same is pending without any action. It is also submitted that without providing any opportunity to the petitioner, the second respondent issued the impugned notice to the petitioner alone, which is illegal and in violation of the principles of natural justice.

8.Upon considering the pleadings and submissions made by the learned counsel appearing for both the parties, it is seen that the petitioner has already been issued notice dated 21.04.2008 under section 7 of the Tamil Nadu Land Encroachment Act, 1905; and that, she has made an application to the respondent authorities seeking issuance of patta on 09.07.2015, which has not yet been considered, till date. It is further noted that there is no concrete reply on the side of the respondent authorities to the allegation made by the petitioner that she has been singled out by issuing the impugned notice dated 15.10.2018 under Sections 142, 173, 180A, 182, 183, 186 and 313 of the Tamil Nadu District Municipalities Act, 1920, and the Rules framed thereunder, though there are several families living in that area. It is also an admitted fact that before issuance of such notice, no opportunity was provided to the petitioner either to produce the necessary documents or to put forth her case to substantiate her claim, which is contrary to law and against the principles of natural justice.

9.In view of the foregoing, this Court directs the petitioner to submit her reply to the notice dated 15.10.2018, treating it as show cause notice, enclosing



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all the required documents, to the second respondent within a period of four weeks from the date of receipt of a copy of this order. On receipt of the same, the second respondent shall consider the same along with others and pass appropriate orders on merits and in accordance with law, after affording an opportunity of hearing to all the interested parties, within a period of eight weeks thereafter. In the mean while, the respondent authorities shall dispose of the petitioner's application dated 09.07.2015 seeking issuance of patta in respect of the subject property, on merits and as per law. Till the completion of entire exercise by the respondent authorities, there shall be an order of *status quo* as on date.

10. With the above directions, the writ petition is disposed of. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

[R.M.D,J.] [M.S.Q, J.]
20.04.2023

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Speaking Order / Non-speaking order

Internet : Yes.

Index : Yes / No



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