



W.P.(MD) No.184 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Order	Date of Pronouncing the Order
05.01.2023	12.01.2023

CORAM:

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**W.P.(MD) No.184 of 2023
and
W.M.P.(MD) No.160 of 2023**

V.Pandiammal

... Petitioner

-VS-

- 1.The District Collector
Office of the Collectorate
Madurai
- 2.The Revenue Divisional Officer
Office of the Revenue Divisional Officer
Melur, Madurai District
- 3.The Block Development Officer
Block Development Officer
Madurai East, Madurai



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4.The Tahsildar
Madurai East Taluk Office
Madurai

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari calling for the records pertaining to the impugned order passed by the fourth respondent vide proceedings in Na.Ka.No.4385/2017/A3, dated 14.12.2022 and to quash the same as illegal.

For Petitioner : Mr.V.Malaiyendran

For Respondents : Mr.V.Nirmal Kumar
Government Advocate

ORDER

D.KRISHNAKUMAR, J.

Mr.V.Nirmal Kumar, learned Government Advocate, takes notice for the respondents.

2. Challenge in this writ petition is to the proceedings dated 14.12.2022, issued by the fourth respondent, directing the petitioner to remove the encroachment made by her in the subject land *viz.* Survey No.



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63/2B1 of Aandarkottaram Village, Madurai East Taluk, within a period of fifteen days, failing which, necessary action would be taken for removal of the same in accordance with law.

3. According to the petitioner, the subject land was in continuous possession and enjoyment of her ancestors. Her father-in-law was cultivating the subject land for more than fifty years and after his death, she is in exclusive possession and enjoyment of the same, by paying necessary taxes.

4. The petitioner made an application before the first respondent for issuance of Patta in respect of the subject property, on 09.08.2016. Based on her application, though the fourth respondent directed the Revenue Inspector to conduct an enquiry and file a report after verification of the village records, *vide* proceedings dated 16.11.2016, no steps were taken thereafter. Therefore, she made another representation to the first respondent on 20.02.2017. Based on the said representation, the first respondent *vide* proceedings dated 17.03.2017, directed the fourth respondent to take necessary action for issuance of Patta to the petitioner. Based on the said communication, the fourth respondent *vide* proceedings dated 04.08.2017, directed the Revenue Inspector and Surveyor to survey the subject land and



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prepare a plan. Thereafter, the fourth respondent called for a report from the jurisdictional Sub Registrar with regard to the details of the sale of the adjacent lands for the last five years in order to finalize the rate.

5. In such circumstances, one R.Sekar filed a public interest litigation in W.P.(MD) No.947 of 2018 alleging that the petitioner's husband has made encroachments in the subject land, which is classified as a cart track. This Court, by order dated 17.01.2018, directed the Tahsildar, Madurai East, to conduct an inspection in the subject land in the presence of both the petitioner's husband and Sekar, ascertain as to whether the subject land is a cart track or not and take necessary action in accordance with law, depending upon the result of the same.

6. Subsequently, the petitioner filed a suit in O.S.No.75 of 2018, on the file of the I Additional District and Sessions Court, Madurai, seeking declaration of title and issuance of Patta in her name for the subject land.

7. In the meantime, based on the directions issued by this Court *vide* order dated 17.01.2018 in W.P.(MD) No.947 of 2018, an enquiry was conducted, in which the petitioner's husband has stated that he is not in



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occupation of the land as alleged in the said writ petition; for Survey No.63, to an extent of 8 Acres and 22 Cents, Patta has been issued to private parties; cart track is situated on the eastern side of his property and in the village records, it is wrongly mentioned that the total extent of 3 Acres and 16 Cents is a cart track. Thereafter, the Authority concerned issued Section 7 notice to the petitioner to remove the encroachments in the subject land. Hence, she filed a suit in O.S.No.169 of 2018, on the file of the District Munsif Court, Melur, seeking the relief of declaration to declare the Section 7 notice as null and void and the same is pending. In such circumstances, the fourth respondent has issued the impugned proceedings directing the petitioner to remove the encroachments made by her in the subject land. Challenging the same, the present writ petition has been filed.

8. Learned counsel for the petitioner assailed the impugned proceedings on the ground that the no notice was issued to either the petitioner or her husband before issuance of the impugned proceedings as they are in absolute possession and enjoyment of the subject property. However, the respondents, without issuing any notice nor hearing the petitioner, has straightaway issued the impugned proceedings directing the petitioner to remove the encroachments. On this ground, the learned counsel



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WEB COPY for the petitioner prayed for setting aside the impugned order passed by the fourth respondent.

9. Learned Government Advocate appearing for the respondents, on instructions, submitted that the petitioner has no right to claim right over the subject property, which is a Government poromboke land and classified as cart track in the revenue records. Further, the subject land leads to a burial ground and the petitioner has made encroachments blocking the pathway. Therefore, the respondents issued Section 7 notice to the petitioner to remove the encroachments made by her in the subject land. Challenging the same, the petitioner filed a suit in O.S.No.169 of 2018, before the District Munsif Court, Melur, wherein, as on date, no interim order has been granted in favour of the petitioner and the said suit is still pending. Therefore, the learned Government Pleader submitted that the respondents cannot be found fault with in directing the petitioner to remove the encroachments in the subject land and prayed for dismissal of the writ petition.

10. We gave our anxious consideration to the rival submissions and carefully perused the materials on record.



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11. On perusal of the records, it is seen that the petitioner seeks for issuance of Patta in her name for the subject land. According to the petitioner, she is in continuous possession and enjoyment of the subject property. However, one Sekar opposing for issuance of Patta to the petitioner in respect of the subject property filed a public interest litigation in W.P.(MD) No.947 of 2018 alleging that the subject land is nothing but a cart track, which leads to a burial ground. Based on the directions issued by this Court, on 17.01.2018 in the said writ petition, the respondents conducted an inspection in the presence of the petitioner and the said Sekar and during enquiry, it was found that the subject land has been classified as cart track in the revenue records and the petitioner has made encroachments blocking the pathway leading to a burial ground. Hence, the respondents issued Section 7 notice to the petitioner to remove the encroachments made by her in the subject land. However, she filed a suit in O.S.No.169 of 2018, before the District Munsif Court, Melur, to declare the Section 7 notice as null and void and the same is pending disposal. To be noted, in the said suit, no interim order has been granted in favour of the petitioner. Further, there is a specific bar under Section 14 of the Tamil Nadu Land Encroachment Act, 1905 for the Civil Courts for entertaining civil suits challenging the proceedings initiated



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under the said Act. Hence, in view of the specific bar under the Tamil Nadu Land Encroachment Act, 1905, the respondents shall proceed further for removal of encroachments in the subject land in accordance with law.

12. During the course of argument, the learned Government Advocate has produced a copy of A-Register and FMB sketch. A perusal of the same clearly shows that the subject land is classified as cart track. Though the petitioner claims title over the subject property, which is categorically classified as cart track in the revenue records, to substantiate her claim, she has not produced any valid material either before the respondent during the course of inspection conducted based on the directions issued by this Court in W.P.(MD) No.947 of 2018 or the Civil Court, where the suit challenging the Section 7 notice is pending. Rather, the petitioner has filed tax receipts, which are not at all sufficient to claim right over the property. Therefore, this Court is of the view that the petitioner has no semblance of legal right over the subject property and the respondents have rightly issued the impugned proceedings to the petitioner to remove the encroachments made by her in the subject land and the writ petition is therefore liable to be dismissed.



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13. In the result, the writ petition fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[D.K.K., J.]

[R.V., J.]

12.01.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No

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and
R.VIJAYAKUMAR, J.

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ORDER
IN
W.P.(MD) No.184 of 2023
and
W.M.P.(MD) No.160 of 2023

12.01.2023