



W.P(MD)No.3221 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.02.2023

CORAM:

**THE HONOURABLE MR.JUSTICE D. KRISHNAKUMAR
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

**W.P(MD)No.3221 of 2023
and
W.M.P(MD)No.2985 of 2023**

K.Gandhi

... Petitioner

VS.

- 1.The Government of Tamil Nadu,
Represented through its Principal Secretary,
Revenue and Disaster Management Department,
Chennai – 600 009.
- 2.The District Collector,
Office of the District Collector,
Sivagangai District,
Sivagangai.
- 3.The Sub Collector,
Office of the Sub Collector,
Devakottai,
Sivagangai District.
- 4.The Tahsildar,
Thirupathur Tahsildar Office,
Thirupathur Taluk,
Sivagangai District.

5.M.Veeraiya

... Respondents

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PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the fourth respondent's impugned report, dated 06.02.2023 and quash the same as devoid of merits consequently directing the respondents 2 to 4 not to disturb the petitioner's possession and enjoyment in Survey No.17/1 an extent of 95 cents in Karenthelpatti Village, Thirukalapatti Panchayat, Mathavarayanpatti Group, Thirupathur Taluk, Sivagangai District, till the disposal of the revision petition, dated 04.04.2022 made under Section 10-A(1)(C) of the Tamil Nadu Land Encroachment Act, 1905, on the file of the first respondent within the period stipulated by this Court.

For Petitioner : Mr.A.Haja Mohideen

For RR 1 to 4 : Mr.P.T.Thiraviyam
Government Advocate

ORDER

(Order of the Court was made by D. KRISHNAKUMAR, J.)

The prayer in the Writ Petition is seeking for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order passed by the fourth respondent, dated 06.02.2023 and consequently, to direct the respondents 2 to 4 not to disturb the petitioner's possession and enjoyment of the property in Survey No.17/1 to an extent of 95 cents in Karenthelpatti



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Village, Thirukalapatti Panchayat, Mathavarayanpatti Group, Thirupathur Taluk, Sivagangai District, till the disposal of the revision petition, dated 04.04.2022 made under Section 10-A(1)(C) of the Tamil Nadu Land Encroachment Act, 1905, on the file of the first respondent within the period stipulated by this Court.

2. According to the petitioner, she is in occupation of the property comprised in Survey No.17/1 to an extent of 95 cents in Karenthelpatti Village, Thirukalapatti Taluk, Mathavarayanpatti Group, Thirupathur Taluk, Sivagangai District for more than 40 years. Since the said land was classified as 'Arasu Poramboke', the fourth respondent passed the impugned order, dated 29.07.2021, directing the petitioner to remove the encroachments. On receipt of the said order, the petitioner preferred an appeal before the District Collector, Sivagangai on 04.08.2021. Pursuant to the same, the petitioner also filed a Writ Petition in W.P(MD)No.14660 of 2021, to quash the impugned order, dated 29.07.2021 passed by the third respondent therein and consequently to direct the respondents 1 to 3 therein not to disturb the petitioner's possession and enjoyment in Survey No.17/1 to an extent of 95 cents in Karenthelpatti Village, Thirukalapatti Panchayat, Mathavarayanpatti Group, Thirupathur Taluk, Sivagangai District



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WEB COURT

till the disposal of the petitioner's appeal, dated 04.08.2021 made under Section 10 of the Tamil Nadu Land Encroachment Act, 1905, on the file of the first respondent therein. This Court, by order, dated 17.08.2021 passed the following order:-

"4.In view of the submissions made by the learned counsel appearing for the petitioner, without expressing any opinion with regard to the merits of the case, we direct the first respondent to consider the petitioner's stay petition filed under Section 10B of the Tamil Nadu Land Encroachment Act, 1905 filed along with the appeal under Section 10 of the Act on 04.08.2021, on merits and in accordance with law within a period of two weeks from the date of receipt of a copy of this order."

Pursuant to the said order, dated 17.08.2021, the second respondent dismissed the petitioner's appeal in Na.Ka.E4/5915/2021, dated 15.02.2022, by partly granting the relief of patta for the house property. Challenging the same, the petitioner preferred a revision before the first respondent on 04.04.2022 to set aside the order passed by the second respondent and to grant patta to the petitioner for the whole property. Accordingly, the first respondent issued summons on 24.05.2022 to the



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petitioner to appear for an enquiry. The petitioner appeared before the first respondent with necessary documents on 01.06.2022 and the revision is pending till now. Whiles, the fourth respondent passed the impugned order, dated 06.02.2023, directing the petitioner to vacate the premises within 15 days, failing which, they will evict them. Challenging the impugned order, dated 06.02.2023, the petitioner has filed the present Writ Petition.

3.The primordial contention of the learned counsel appearing for the petitioner is that when the revision petition is pending, the said action taken by the fourth respondent is illegal and without justification and therefore, he seeks interference of this Court to set aside the impugned order passed by the fourth respondent, dated 06.02.2023. Further, according to the petitioner, the said eviction notice issued by the fourth respondent also includes the house property of the petitioner.

4.The learned Government Advocate appearing for the respondents 1 to 4 submitted that the revision petition filed by the petitioner is pending before the revisional authority and the same will be considered and appropriate orders will be passed.



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5.Considering the facts and circumstances of the case, we are of the view that the action taken by the respondents 1 to 4 for evicting the petitioner by issuing a notice under Section 6 of the Tamil Nadu Land Encroachment Act, 1905, is unsustainable, when the revision petition is pending before the revisional authority. Accordingly, we are inclined to pass the following order:-

(i) The impugned order, dated 06.02.2023, passed by the fourth respondent under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 is quashed.

(ii) The first respondent/Revisional Authority is directed to consider the petitioner's revision petition, dated 04.04.2022 and pass appropriate orders on merits and in accordance with law, as early as possible, preferably within a period of twelve weeks from the date of receipt of a copy of this order.

(iii) Till final orders are passed in the revision petition, both parties are directed to maintain *status quo*, as on today.



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6.With the above directions and liberty, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

[D.K.K.,J.] [L.V.G.,J.]
16.02.2023

NCC : Yes / No
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Internet : Yes
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To

- 1.The Principal Secretary,
Represented by the Government of Tamil Nadu,
Revenue and Disaster Management Department,
Chennai – 600 009.
- 2.The District Collector,
Office of the District Collector,
Sivagangai District,
Sivagangai.
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Office of the Sub Collector,
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Thirupathur Tahsildar Office,
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D. KRISHNAKUMAR,J.
and
L.VICTORIA GOWRI,J.

ps

ORDER MADE IN
W.P(MD)No.3221 of 2023

DATED : 16.02.2023