



W.P.(MD)No.20540 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.(MD)No.20540 of 2023

and

W.M.P.(MD)No.16979 of 2023

Thangaselvi

... Petitioner

Vs.

1.The District Collector,
Thoothukudi District, Thoothukudi.

2.The Assistant Director-Panchayats,
O/o.Assistant Director-Panchayats,
Tirunelveli.

3.The Tahsildar,
Taluk Office,
Thiruchendur Taluk, Thoothukudi District.

4.The Executive Officer,
Udankudi Town Panchayat,
Thiruchendur Taluk, Thoothukudi District.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned



W.P.(MD)No.20540 of 2023

communication in Na/Ka/No.449/2022/A1, dated 10.08.2023 issued by the 4th respondent and set aside the same and further, to allow the petitioner to enjoy her property without any interference.

For Petitioner : Mr.V.Rajiv Rufus
For R1 to R3 : Mr.P.Thilak Kumar,
Government Pleader
For R4 : Mr.T.Villavankothai,
Additional Government Pleader

ORDER

(Order of the Court was made by ***S.S.SUNDAR, J.***)

By consent of both parties, this Writ Petition is taken up for final disposal at the stage of admission itself.

2.Mr.P.Thilak Kumar, learned Government Pleader takes notice on behalf of the respondents 1 to 3 and Mr.T.Villavankothai, learned Additional Government Pleader takes notice on behalf of the 4th respondent.

3.This Writ Petition is filed by the encroacher to stall the proceedings relating to the removal of encroachment.



W.P.(MD)No.20540 of 2023

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4.The petitioner claims title in respect of the property in Natham S.No.61 (S.F.No.265/5a1), Kalankudiruppu Village, Udankudi, Tiruchendur Taluk, Thoothukudi District and filed several documents in the typed set of papers, which would show that she had acquired some right through sale deed in respect of the property in question.

5.Earlier, one Rasiq filed W.P.(MD)No.20971 of 2021, alleging that the petitioner herein had encroached the land to an extent of 364 sq.ft in Natham S.No.61. The said Writ Petition was disposed of by this Court vide order dated 27.10.2022, directing the official respondents to consider the representations of the petitioner therein and to pass appropriate orders and by observing that if there is any encroachment found, the same shall also be removed.

6.It appears that S.No.61 though classified as Natham, according to re-survey, portion of the property was classified as public road. In the said circumstances, though the petitioner has purchased an extent of 6 cents in S.No. 61, the petitioner has not produced any records to show that subject matter comes within 6 cents purchased by the petitioner. Merely because the petitioner has



W.P.(MD)No.20540 of 2023

established her right in respect of small extent in S.No.61, her claim in respect of every inch of the property in the survey number cannot be upheld. The question of title is an issue.

7.It is to be noted that the petitioner had already filed a civil Suit in O.S.No.13 of 2011 on the file of the District Munsif, Tiruchendur. Though the petitioner obtained interim orders for production of several documents and the trial was completed, it is now admitted before this Court that the said suit was dismissed for non-prosecution even in the year 2014. The petitioner has stated in the affidavit filed in support of this petition that the suit was filed by her husband and that she could not prosecute the suit after her husband's death and it was dismissed for non-prosecution way back in the year 2014. This statement is false because the suit itself was filed by the petitioner and not by her husband. Further, she had not given any explanation as to why she has not taken any steps to restore the suit, even though it was dismissed way back in the year 2014. Therefore, the petitioner cannot now rely upon the statement of the witnesses, which were examined in the said suit and some of the documents filed by her in the said suit to sustain that she had absolute right over the property. Ofcourse, the proceedings were initiated by the official respondents for removal of the encroachment.



W.P.(MD)No.20540 of 2023

Therefore, depending upon the outcome of the said suit, the proceedings regarding eviction will lose its significance in the civil Court.

8.At this juncture, the learned counsel for the petitioner states that the petitioner is now taking steps to restore the suit. It will be open to the petitioner to pursue her right in the civil Suit in the manner known to law. However, this Court finds no reason to interfere with the order of eviction, as the petitioner has not produced sufficient documents to establish her title to the property, which is the subject matter of the eviction proceedings in respect of an extent of 364 sq.ft in Survey No.265/5a1.

9.Accordingly, this Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(S.S.S.R., J.) & (D.B.C., J.)

23.08.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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W.P.(MD)No.20540 of 2023

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AND

D.BHARATHA CHAKRAVARTHY, J.

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W.P.(MD)No.20540 of 2023

23.08.2023