



W.P.(MD)No.20429 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.20429 of 2023

and

W.M.P.(MD)Nos.16864 & 16865 of 2023

Mohamed Thoubika

... Petitioner

Vs.

1.The District Collector,
O/o. The District Collector,
Tirunelveli-627001.

2.The Commissioner of Corporation,
O/o. The Commissioner of Corporation,
Tirunelveli.

3.The Assistant Commissioner of Corporation,
Melapalayam Ward Office, Tirunelveli.

4.The Tahsildar,
Palayamkottai Taluk Office,
Palayamkottai, Tirunelveli-627002.

...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 notice passed by the 4th respondent in Na.Ka.Aa6/1260/2021, dated 16.08.2023



W.P.(MD)No.20429 of 2023

and quash the same as illegal, consequently, directing the respondents 2 and 3 to grant building approval after collecting necessary fee from the petitioner by considering the petitioner's representation dated 16.08.2023.

For Petitioner : Mr.M.M.Manivelpandian

For Respondents : Mr.D.Sachi Kumar,
Additional Government Pleader

ORDER

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

This Writ Petition is filed challenging the order passed by the 4th respondent dated 16.08.2023, directing the petitioner to remove the encroachment made in Survey No.490/2P, situated at Melapalayam Village, Palayamkottai Taluk, Tirunelveli District, which is classified as 'Government Poramboke', with a consequential direction to the respondents 2 and 3 to grant building approval, after collecting necessary fee from the petitioner by considering her representation dated 16.08.2023.

2.Mr.D.Sachi Kumar, learned Additional Government Pleader takes notice on behalf of the respondents.



W.P.(MD)No.20429 of 2023

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

4.According to the petitioner, he is not in encroachment of any public property and that he is only in possession of the property in Survey No.489/3A, in respect of which he has filed documents before this Court.

5.A perusal of the documents shows that it is only pertaining to Survey No.489/3A and no document of title is filed by the petitioner to show her right over any part of the property in Survey No.490/2P. Earlier, one A.S.Ahamed Khan has filed a Writ Petition before this Court, seeking removal of encroachment made in the Government Road Poramboke Lands in Old Survey No.490/1 and 490/2P, T.S.Nos.7 and 8 of Melapalayam Village, Palayamkottai Taluk, Tirunelveli District by the petitioner herein, wherein, this Court passed an order, directing the respondents 2 and 3 therein to consider the representation of the petitioner therein.



W.P.(MD)No.20429 of 2023

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6.Pursuant to the said order, when the proceedings were initiated by the 4th respondent for removal of the encroachment by issuance of notice under Section 7 of the Land Encroachment Act (hereinafter referred to as 'the Act'), the petitioner had challenged the same in a Writ Petition in W.P.(MD)No.20727 of 2021. Ultimately, the said Writ Petition was disposed of with a direction to the 4th respondent to conduct an enquiry by giving opportunity to the petitioner and take further action in accordance with law, if there is any encroachment. Thereafter, a notice under Section 6 of the Act was issued by the 4th respondent, holding that the petitioner is in encroachment of the property to an extent of 77 Sq.Mtr., in Survey No.490/2P by putting up a construction, which is classified as 'Government Poramboke'. The same was also communicated to the petitioner.

7.Despite the final order of eviction notice was passed under Section 6 of the Act, the petitioner did not remove the encroachment and therefore, through the impugned order dated 16.08.2023, once again the 4th respondent has directed the petitioner to remove the encroachment by 17.08.2023. Against which, the Writ Petition is filed.



W.P.(MD)No.20429 of 2023

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8.As pointed out earlier, the petitioner has no document or material to show her right over any part of Survey No.490/2P, in respect of which eviction proceedings were initiated by the 4th respondent. In the said circumstances, this Court is unable to find any merit in the submissions made by the petitioner, claiming right or title over the property. However, the learned counsel for the petitioner seeks indulgence of this Court to give liberty to the petitioner to establish her right or title by filing a civil Suit.

9.In view of the above submissions, this Writ Petition is dismissed, however, liberty is given to the petitioner to establish her right or title against the Government. No costs. Consequently, connected miscellaneous petitions are 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.20429 of 2023

S.S.SUNDAR, J.

AND

D.BHARATHA CHAKRAVARTHY, J.

Yuva

To

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W.P.(MD)No.20429 of 2023

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