



W.P.(MD) No.21075 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.08.2023

CORAM:

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.P.(MD) No.21075 of 2023

and

W.M.P.(MD)No.17479 of 2023

Rajammal

: Petitioner

-vs-

- 1.The Commissioner of Land Administration
cum Revisionary Authority,
Commissionerate of Land Administration,
2nd Street, Ezhilagam,
Chepauk, Chennai.
- 2.The District Collector,
Sivagangai District Collectorate,
Sivagangai.
- 3.The Tahsildar,
Karaikudi Taluk,
Sivagangai District.

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the first respondent to dispose of the petitioner's Statutory Revision Application, dated 16.08.2023 preferred by the petitioner under Section 10A of the Tamil Nadu Land Encroachments Act, 1905 within the time that may be stipulated by this Court and consequently, forbear the respondents from taking any coercive action qua the petitioner's house in S.No.529/8, Pananvyail Village, Saakotai Sub Division, Karaikudi Taluk, Sivagangai District till such time.



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For Petitioner : Mr.M.Mahaboob Athiff
For Respondents : Mr.S.P.Maharajan
Special Government Pleader

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ORDER

[Order of the Court was made by S.S.SUNDAR, J.]

This Writ Petition is filed for issuance of a Writ of Mandamus to direct the first respondent to dispose of the petitioner's Statutory Revision Application, dated 16.08.2023 preferred by the petitioner under Section 10A of the Tamil Nadu Land Encroachment Act, 1905 within the time that may be stipulated by this Court and consequently, forbear the respondents from taking any coercive action qua the petitioner's house in S.No.529/8, Pananvyail Village, Saakotai Sub Division, Karaikudi Taluk, Sivagangai District till such time.

2. The petitioner states that she is an agricultural coolie and she is residing by putting up a hut in S.No.529/8 in Pananvyail Village, Saakotai, Karaikudi Taluk, Sivagangai District. It is the case of the petitioner that she is in possession of the land for the past more than 8 decades and she had obtained electricity service connection and had been paying property tax for the construction, she had put up. The further case of the petitioner is that one Chinnasamy, District President of Namthamilar Party wanted to evict



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the petitioner and that he had influenced the official to initiate action for removal of encroachment because the petitioner refused to yield to the request of the said individual.

3. The petitioner is aggrieved by the proceedings initiated under the Tamil Nadu Land Encroachment Act, 1905 to evict her from the premises, which is in her occupation. From the proceedings initiated against the petitioner, it is seen that an extent of 0.85.50 ares (approximately 2 acres 15 cents), is registered as Government poramboke and the petitioner is in possession and enjoyment of the said land in S.No.529/8. From the photographs, it is only seen that the petitioner has recently put up construction with hollow blocks probably to have residence. The petitioner seeks indulgence even after admitting that the property in which she claims to be in possession is a Government poramboke land. The petitioner has no right. Merely because the petitioner is in possession for several decades that does not clothe her with any right to resist an action for removal of encroachment. Except claiming to be in enjoyment which is also not supported by any verifiable material, this Court is unable to grant any relief by assuming that the petitioner has title or the petitioner as a person who can be recognized as a person in settled possession. Be that as it may, the petitioner was issued with a show cause notice in terms of Section 7 of the Tamil Nadu Land Encroachment Act 1905. After satisfying that the



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petitioner has no valid objections, an order under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 is passed. The petitioner states that an appeal was earlier filed before the District Collector and thereafter, challenges the order of the District Collector dismissing the appeal before the first respondent who is the Revisional Authority.

4. The petitioner has preferred a revision before the first respondent. The learned Special Government Pleader submitted that the first respondent is not a revisional authority in terms of Section 10A of the Tamil Nadu Land Encroachment Act, 1905. The learned Special Government Pleader submitted that as per Section 10A(1)(c), it is only the State Government, which can decide the revision as against the order passed by the Appellate Authority. In this case, the District Collector has passed an order as an Appellate Authority in terms of Section 10 of the Act. Therefore, it is contended by the learned Special Government Pleader that the revision stated to have been filed by the petitioner before the Commissioner of Land Administration, cannot be entertained on merits.

5. However, the learned counsel for the petitioner states that the District Collector while passing the impugned order has specifically mentioned that as against, the order of the District Collector which is impugned in the writ petition, the petitioner should file an appeal before the



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first respondent. To consider whether the revision should lie before the State Government or the Land Commissioner, this Court has to examine a few provisions of the Act. The power under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 can be exercised by the Collector or subject to his control early by the Tahsildar or Deputy Tahsildar or any other officer authorised by the State Government in this behalf. This Court has seen that even show cause notices are issued by the Revenue Inspector under Section 7 of the Act. Therefore, for the purpose of encroachment, different authorities may initiate proceedings or pass final orders. It is also to be noted that proceedings for eviction can be initiated against a person unauthorizedly occupying the land and liable to penal assessment under Section 3 or Section 3(A) of the Tamil Nadu Land Encroachment Act, 1905. Therefore, the term 'District Collector' would certainly indicate the Collector of the District and the Collector found in Section 7 may include anyone who is authorised to perform the functions of Collector in terms of the provisions of the Act. Sections 10 and 10(A) read as follows:

“10. Appeal. - [xxx] *An appeal shall lie-*

(a) to the Collector from any decision or order passed by a Tahsildar or Deputy Tahsildar [xxx] under this Act, and

[(aa) to such officer as may be specified by the State Government in this behalf (hereinafter referred to as the appellate authority) from any decision or order passed by an authorised officer under this Act and different appellate authorities may be specified for different classes of cases; and]



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(b) to the District Collector from any decision or order of a Collector passed otherwise than on appeal, and

(c) to the [Commissioner of Land Administration] from any decision or order of a District Collector passed otherwise than on appeal.

[Sub-section (2) was omitted by section 6 of the Tamil Nadu Land Encroachment (Amendment) Act, 1965 (Tamil Nadu Act 26 of 1965).]

[10A. Revision. -

(1) Any decision or order passed under this Act may be revised either suo motu or on application-

(a) by the District Collector, if such decision or order was passed by [xxx] a Deputy Tahsildar, Tahsildar or Collector;

(b) by the [Commissioner of Land Administration] if such decision or order was passed by any officer [other than the appellate authority];

(c) by the State Government if such decision or order was passed by the [appellate authority or the [Commissioner of Land Administration]].

(2) The power conferred by sub-section (1) shall not be exercised except on the ground that the officer or authority whose decision or order is sought to be revised appears to have exercised a jurisdiction not vested in him or it by law, or to have failed to exercise a jurisdiction so vested, or to have acted in the exercise of his or its jurisdiction illegally or with material irregularity.

(3) No decision or order shall be passed under sub-section (1) prejudicial to any person without giving such person a reasonable opportunity of making any representation that he may desire to make



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and such representation, if any, shall be taken into consideration, before such decision or order is passed.]”

6. Under Section 10 of the Tamil Nadu Land Encroachment Act, 1905, if an order is passed by anyone other than the District Collector, an appeal may lie before the District Collector as against the order of eviction. In other words, if an order is passed by the Tahsildar or Deputy Tahsildar, the Collector is the Appellate Authority. If any order is passed by the District Collector under the provisions of the Act, otherwise than in the appeal a further appeal lies against the order of District Collector before the Commissioner of Land Administration from any decision of a District Collector otherwise than on appeal. However revision lies before the Commissioner of Land Administration, if such decision or order is passed by any officer other than the Appellate Authority. If a decision is passed by the Appellate Authority or the Commissioner of Land Administration, the revision will lie only before the State Government by virtue of clause (c) of sub Section (1) of Section 10(A) of the Tamil Nadu Land Encroachment Act, 1905. Merely because the order of the District Collector indicates that the petitioner has to file a revision before the first respondent/Commissioner of Land Administration cum Revisionary Authority under the Act. A revision will lie as against the order passed by the Collector in the appeal filed by the petitioner only before the State Government. In this case, though the



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revision is stated to have been filed by the petitioner before the first respondent/Commissioner of Land Administration cum Revisionary Authority in view of the position indicated above, the petitioner has to file a revision only before the State Government. It is stated that the Secretary to Government, Revenue Disaster Management is the proper authority before whom the petitioner has to file a revision.

7. The petitioner now seeks indulgence of this Court to protect her possession during the pendency of a revision before the Land Commissioner. Since the petitioner states that she is in possession of portion for residential purpose, this Court is of the view that a request insofar as the residential portion may be considered.

8. Hence, this Writ Petition is disposed of with the following directions:

(i) The petitioner is directed to file a revision petition before the State Government as indicated above within a period of two weeks from the date of receipt of a copy of this order;

(ii) When a revision petition is filed before the State Government, the State Government shall pass appropriate orders on merits and in accordance with law within a period of six weeks from the date of receipt of the application for revision;



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(iii) The scope of revision is only in respect of the residential portion and the appurtenance to the building stated to have been constructed by the petitioner in respect of the vacant land adjoining the petitioner's house. The proceedings for eviction is confirmed in respect of the remaining portion and it is open to the respondents to take possession of the same;

(iii) It is made clear that the appurtenance will be not beyond 50% of the total construction in which, the petitioner is in possession;

(iv) It may be open to the petitioner to choose which portion of this house, she wants to retain till such time revision is considered on merits; and this order cannot be construed to enable the petitioner to claim patta for any portion of land. When the encroachment is objectionable, the petitioner can be evicted even from the building.

(v) No costs. Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.] [D.B.C., J.]

28.08.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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S.S.SUNDAR, J.

and

D.BHARATHA CHAKRAVARTHY, J.

sjj

To

- 1.The Commissioner of Land Administration
cum Revisionary Authority,
Commissionerate of Land Administration,
2nd Street, Ezhilagam,
Chepauk, Chennai.
- 2.The District Collector,
Sivagangai District Collectorate,
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