



W.P.No.7011 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.7011 of 2014
and M.P.No.1 of 2014

M.Thara

...Petitioner

-Vs-

1. The District Collector,
Cuddalore District.
2. The District Revenue Officer,
Cuddalore District.
3. The Commissioner,
Chidambaram Municipality,
Cuddalore District.
4. Executive Engineer (O &M),
Tamilnadu Electricity Board,
Chidambaram – 608 001.
5. M/s. Chidambaram Town Fishermen
Colony Residence Welfare Association,
Reg. No.30/2009 Rep by its President
Kaliaymoorthy,
Meenavar Community Hall,
Meenavar Colony,
Chidambaram – 608 001



W.P.No.7011 of 2014

6. Sivaraj

(R6 impleaded vide order dated
15.09.2023 made in W.M.P.No.
20897/2023 in W.P.No.7011/2014)

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents 1 and 2 to initiate action against the respondents 3 & 4 and evict the fifth respondent from the petitioner property more particularly described in the schedule and restore possession to the petitioner after conducting an enquiry in terms of the representation dated 10.05.2012 and subsequent representation dated 07.05.2013 given by the petitioner.

For Petitioner : Mr.S.Veeraraghavan

For Respondents

For R1 & R2 : Mr.S.J.Mohamed Sathik
Government Advocate

For R3 : Mr.P.Srinivas
Standing Counsel

For R4 : Mr.V.Venkata Seshaiya

For R5 : No appearance

For R6 : Mrs.R.Ramya

ORDER

This writ petition has been filed for direction directing the respondents 3 & 4 to vacate the fifth respondent from the petitioner's property.



W.P.No.7011 of 2014

2. The case of the petitioner is that the property comprised in

T.S.Old No.130/2, New No.1353, Ward No.2, Block No.21, Patta No.714 to the extent of 3.16 Acres, wet land situated in Muthumanika Nadar Street, Chidambaram, originally owned by the petitioner's husband. Her husband purchased the said property through Court auction sale held on 10.08.1978 in E.P.No.149 of 1977 in O.S.No.1446 of 1971 on the file of the District Munisif Court, Chidambaram. After purchase, the petitioner's husband was issued with sale certificate and thereafter possession of the property was also handed over in favour of her husband. Subsequently, on 20.04.2009, her husband settled the property in favour of the petitioner by way of Settlement deed registered vide document No.1553 of 2009.

3. While being so, one Kaliyamoorthy, retired Village Administrative Office of the Vasaputhur Village, Chidambaram Taluk, and who is the president of the fifth respondent association had put up a building in the petitioner's property and also illegally occupied by the trespassers. They put up hut and also they got electricity service connection. Therefore, the petitioner submitted representation to the



W.P.No.7011 of 2014

respondents 1 to 3 to take appropriate action and also vacate them from the petitioner's property. Since the same was not considered, the petitioner approached this Court by way of the present writ petition.

4. The learned counsel appearing for the petitioner submitted that there was a proposal to give free house site patta to the fishermen community people and on receipt of the same the government issued order in G.O.Ms.No.1019 Fisheries Department dated 20.09.1979, thereby the subject land has been acquired on condition that 2/3 amount borne out by the fisheries department and 1/3 amount to be borne out towards fishermen community people. However, the said proposal was not acted upon since it was not feasible and it was not implemented. Utilizing the said circumstances, some of the third parties viz., members of the fifth respondent association herein entered into the subject property even in the year 1980 itself, and they had put up hut and for the residential hut they also obtained electricity service connection. Therefore, for the past several years the petitioner is keep on knocking the doors of the respondents to vacate the encroacher from the petitioner's land.



W.P.No.7011 of 2014

5. While pending the writ petition, the sixth respondent has been impleaded and the learned counsel appearing for the sixth respondent submitted that though the petitioner's husband purchased the property through Court auction, it was subject to usufructuary mortgage to the tune of Rs.4,000/-. She further submitted that the sixth respondent and other persons had occupied the subject property on the mortgage done by the original owner viz., Rathinavel Nadar, who was the first defendant in the suit in O.S.No.1446 of 1971. Therefore, without clearing the mortgage with the sixth respondent, the petitioner cannot sought for eviction. Even from the year 1971, they are in possession and enjoyment of the respective portion of the property. They constructed pucca house and also obtained electricity service connection in their respective house. The petitioner can take appropriate action as against the Village Administrative Officer, who represented the fifth respondent association, that too by departmental proceedings.

6. The learned Government Advocate appearing for the respondents 1 & 2 submitted that while pending this writ petition, one of the association like fifth respondent herein filed writ petition before this



W.P.No.7011 of 2014

Court in W.P.No.20538 of 2018, seeking free house site patta for their respective portion of the property. This Court by an order dated 07.09.2018, directed the District Collector to consider their representation and pass orders on merits and in accordance with law. As directed by this Court, the District Collector viz., the first respondent herein by an order dated 03.06.2023, rejected the claim made by the said association seeking free house site patta, on the ground that the said land belongs to the petitioner and the revenue records were also mutated in her favour. In order to issue free house site patta, the subject land has to be acquired and the total cost around Rs.27,69,68,450/- in which, 1/3 amount to be borne out by the persons who are asking for free house site patta and it would come around Rs.43,27,632/-. Therefore, it is not feasible and rejected the claim for issuance of free house site patta.

7. Heard the learned counsel appearing on either side and perused the material places before this Court.

8. On perusal of the counter filed by the fifth respondent revealed that the fifth respondent association filed suit in O.S.No.91 of



W.P.No.7011 of 2014

1999 on the file of the learned District Munsif, Chidambaram, as against the petitioner and her husband for permanent injunction and the same was also decreed in favour of the fifth respondent by the judgment dated 14.11.2014. Aggrieved by the same, the petitioner's husband preferred a first appeal in A.S.No.23 of 2016 on the file of the Subordinate Court, Mayiladuethurai and the same was allowed by setting aside the judgment and decree passed in O.S.No.91 of 1999 by the judgment and decree dated 26.11.2019. Aggrieved by the same the fifth respondent association and the sixth respondent herein filed a second appeal before this Court in S.A.No.379 of 2020 and it is pending.

9. Further, the said Rathinavel, who is none other than the first defendant in the suit in O.S.No.1446 of 1971, in which the petitioner's husband purchased the subject property through Court auction, had executed usufructuary mortgage dated 07.12.1968 in favour of one Thangathammal and it was registered in favour of the sixth respondent herein, who was the then Secretary of the fifth respondent association herein. In fact, the said property was purchased by the petitioner's husband only on condition to redeem of the usufructuary mortgage on



W.P.No.7011 of 2014

payment of Rs.4,000/-. Therefore from 07.12.1968 onwards, the fifth respondent and their members are in possession and enjoyment of the subject property. After construction of their respective houses, they obtained electricity connection and also water connection.

10. In view of the above discussions, the representation submitted by the petitioner cannot be considered and the writ petition is devoid of merits and liable to be dismissed. Accordingly, the Writ Petition stands dismissed. Consequently, connected miscellaneous petition is closed. There shall be no orders as to costs.

17.04.2024

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No

rts



W.P.No.7011 of 2014

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