BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.06.2024

CORAM:

THE HONOURABLE **MR.JUSTICE R.SURESH KUMAR**

AND

THE HONOURABLE **MR.JUSTICE G.ARUL MURUGAN**

W.P.(MD)No.12332 of 2024
and
W.M.P.(MD)Nos.10921 & 10922 of 2024

Ponnammal ... Petitioner

-Vs-

1.The District Collector,
Tirunelveli District, Tirunelveli.

2.The Tahsildar,
Taluk Office, Nanguneri Taluk,
Tirunelveli District.

3.The Revenue Inspector,
Ervadi Revenue Firka,
Ervadi, Nanguneri Taluk,
Tirunelveli District. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the impugned order of the 2nd respondent dated 07.06.2024 and quash the same.

For Petitioner : Mr.V.S.Kishok Kumar

For Respondents : Mr.N.Satheesh Kumar,
Additional Government Pleader

ORDER

[Order of the Court was made by *R.SURESH KUMAR, J.*]

The order of the 2nd respondent dated 07.06.2024 is under challenge in this Writ Petition.

2.It is the stand of the Revenue Department that the Government (Poramboke) land in Survey No.654/3, at Padalaiyarkulam Village to the extent of 0.01.85 ares, has been encroached upon by the petitioner. Therefore, action under Section 6 of the Act III of 1905 was initiated and an order dated 21.06.2023 has been issued to evict the petitioner from the encroached land.

3.The said order dated 21.06.2023 has been put under challenge by the petitioner in the earlier round of litigation in W.P.(MD)No.17591 of 2023, where the Division Bench of this Court, vide order dated 20.07.2023, has passed the following order:-

> *"5.The writ petition is allowed and the impugned order dated 21.06.2023 passed by the second respondent under Section 6*

of the Act is quashed. The second respondent is directed to conduct a survey, after issuing notice to the petitioner and in her presence, in Survey No.654/3 with reference to the revenue documents and the documents relied upon by the petitioner. Thereafter, a report of such survey shall be drawn by the second respondent. After issuing a copy of the report to the petitioner, it is open to the second respondent to initiate action in accordance with law in case the petitioner is found to be in encroachment of any portion of Government property. No costs. Consequently, connected miscellaneous petitions are closed."

4.Pursuant to the said order passed by the Division Bench, the Revenue Authorities, after having given notice to the petitioner, had conducted survey in her presence and after having conducted survey of the property, filed sketch as well as the report, showing that the petitioner had been in encroachment of the Government property in the said Survey No.654/3. A copy of the said report has also been served on the petitioner by communication dated 27.05.2024.

5.Thereafter also, since the petitioner has not moved out of the encroached land, it has become necessitated for the Revenue Department to initiate further action. Therefore, once again, the order under Section 6 of the Act has been issued on 07.06.2024, which is under challenge in the present Writ Petition.

6.The learned counsel appearing for the petitioner has contended that in the year 1991, the property has been delivered in favour of the petitioner by her husband, namely, Gopalakrishnan. When a specific question has been posed to the learned counsel for the petitioner, as to how the husband of the petitioner has got the property, the learned counsel for the petitioner has stated that long time he has been in possession. Therefore, based on the possessory right, he claimed to have perfected title and accordingly, he has settled the property in favour of his wife, who is none other than the petitioner. Therefore, even on the basis of the admitted case on the part of the petitioner, the petitioner has been in occupation of the Government land, which is nothing but an encroachment within the meaning of the provisions of the Act III of 1905.

7.Even the earlier attempt made by the revenue authorities to evict the petitioner had been thwarted by her by approaching this Court by filing the said Writ Petition, wherein on the ground that there has been no Section 7 notice prior to Section 6 order, the Division Bench quashed the said order on 20.07.2023, wherein a direction had been given to the 2nd respondent to issue notice and conduct survey, thereafter, take action against her under the provisions of the Act.

8.What has been directed by this Court dated 20.07.2023 in the earlier Writ Petition, has been followed by the revenue authority.

9.However, the learned counsel for the petitioner has made an argument, stating that pursuant to the order passed by the Division Bench, though survey has been conducted, it has not been properly conducted. He has also stated that even though the survey has been conducted and survey report has been issued, once again Section 7 notice should have been issued and without issuing Section 7 notice, Section 6 order ought not to have been issued. Therefore, on this ground, this order is assailable, he contended.

10.The said submission made by the learned counsel for the petitioner is, absolutely, ridiculous and cannot be sustained for the reason being that what are all the proceedings that have been initiated by the revenue authorities prior to the order dated 20.07.2023, have been merged with the said order passed by the Division Bench of this Court.

11.When the Division Bench has given a clear direction to the revenue authorities to issue notice and conduct survey of the land in question in the presence of the petitioner, it has been scrupulously followed by the respondent/ Revenue Department and after giving notice to the petitioner, survey has been conducted in her presence and after having found that there has been encroachment in the land in question by the petitioner, sketch prepared along with the report was served on her and that proceedings dated 27.05.2024 has been received and accepted by the petitioner. Only thereafter, the said Section 6 order has been issued.

12.At this juncture, no question of issuing notice once again under Section 7 of the Act arises for the reason being that the order of the Division Bench of this Court dated 20.07.2023 has been complied with by the revenue authorities and after having issued notice, survey has been conducted in the presence of the petitioner and ultimately, Section 6 order has been issued. Therefore, absolutely, there has been no reason to interfere with the said order passed by the revenue authorities under Section 6 of the Act, which is impugned herein. Certainly, this Writ Petition has to fail. Accordingly, this Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

[R.S.K., J.] & [G.A.M., J.]
11.06.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

1.The District Collector,
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2.The Tahsildar,
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R.SURESH KUMAR, J.

AND

G.ARUL MURUGAN, J.

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