
(2012) 06 MAD CK 0061

In the Madras High Court

Case No : Writ Petition (MD) No. 7860 of 2012

A. Palaniammal

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 12-06-2012

Acts Referred:

Citation : (2012) 06 MAD CK 0061

Hon'ble Judges : R. Banumathi, J;B. Rajendran, J

Bench : Division Bench

Advocate : M. Subash Babu, for the Appellant; K. Mahendran, Spl. Govt. Pleader For Respondents 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

B. Rajendran, J.—The Petitioner has come forward with this Writ Petition seeking for a Writ of Mandamus directing the 3rd Respondent to

implement the order passed by the 2nd Respondent, vide his Letter in Na.Ka.No. 634/10/Thi.1, dated 31.03.2010. Heard the learned counsel for

the Petitioner and the learned Special Government Pleader, who has taken notice on behalf of Respondents 1 to 3.

2. The Petitioner would contend that her husband by name Vairavan is the owner of the property in Survey No. 358 (Patta No. 1619),

Kedaripatti Village. According to the Petitioner, one Kannan, S/o. Ramar, the 4th Respondent herein, has made an encroachment in the said

property, by erecting a Flex Board. When the Petitioner requested the 4th Respondent to remove the said flex board, he refused to do so and

therefore she made a police complaint on 20.12.2009. Since no action was taken, she approached the Village Administrative Officer and

thereafter it was referred to the Block Development Officer, the 2nd Respondent.

3. A perusal of the records produced by the Petitioner shows that without notice to anyone, much less the alleged encroacher, the 2nd Respondent

has issued a proceedings in Na.Ka.No. 634/10/Thi.1, dated 31.03.2010, directing the 3rd Respondent, namely the Inspector of Police,

Melavalavu Police Station, to remove the alleged encroachment made by the 4th Respondent. Stating that pursuant to the orders of the Block

Development Officer no action was taken by the 3rd Respondent, the Petitioner has come forward with the present petition seeking a mandamus

directing the 3rd Respondent to implement the orders of the 2nd Respondent, dated 31.03.2010.

4. When the Writ Petition came up for admission, a specific question was posed to the learned counsel for the Petitioner as to whether any notice

was issued to anyone before the passing the order dated 31.03.2010, there was no answer. Even as per the proceedings dated 31.03.2010, it is

very clear that the 2nd Respondent, only on the allegations made by the Petitioner and on a perusal of the records produced by her, has come to

the conclusion that the 4th Respondent has encroached upon the Petitioner's property and therefore issues a direction to the 3rd Respondent to

remove the flex board said to have been erected by the 4th Respondent. Such a course of action cannot be allowed to happen, because it would

be in violation of principles of natural justice. Even a trespasser has to be evicted in accordance with law. Merely under the pretext that a direction

is sought for to implement the orders of the 2nd Respondent, virtually speaking, the Petitioner is seeking for removal of the alleged encroachment

without giving any notice/opportunity to the alleged encroacher. Further, the property in question is not Government property and even according

to the Petitioner the property is owned by her husband and therefore such a course will not be proper. The proper course is that the Petitioner has

to approach the competent civil court for appropriate remedy and in the facts and circumstance of the case, no writ in the nature of mandamus

could be issued. Hence the writ petition is dismissed. No costs.