

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:18.07.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Writ Petition No.11794 of 2016
and
WMP No.10177 of 2016

V.Gopal

...Petitioner

Vs.

- 1.The District Collector,
Salem District, Salem.
- 2.The District Revenue officer,
Office of the District Collectorate,
Salem District, Salem.
- 3.The Revenue Divisional Officer,
Office of the Revenue Divisional officer,
Mettur Dam, Mettur Taluk,
Salem District.
- 4.The Tahsildar,
Office of the Tahsildar,
Mettur Dam, Mettur Taluk,
Salem District.
- 5.N.K.Chinnammal

6.K.Parimala

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus to direct the respondents 1 to 4 herein to remove the encroachments made by respondents 5 and 6 herein on the public road, Kanmai situated and comprised in S.No.712/6 to the extent of 0.19.0 Hectare classified as Road, comprised in S.No.711/3, admeasuring 0.06.0 Hec, classified as Road, comprised in S.No.697/4, admeasuring 2.25.0 Hectare classified as Odai and comprised in S.No.697/3, admeasuring 0.44.0 Hec, classified as Parai (rock), Gonur East Village, Mettur Taluk, Salem District admeasuring Gonur Village, Mettur Taluk, Salem District and consequently direct them to maintain the public road in proper manner.

For Petitioner : Mr.Saikrishnan for
M/s.Sai Bharath and Ilan

For R1 to R4 : Mrs.A.Srijayanthi, SGP
For R5 and R6 : Mr. Parthasarathy, SC for
M/s.A.Sundaravadanam

ORDER

(Order of the Court was made by HULUVADI G. RAMESH,J.)

Heard both sides and perused the available materials.

2. The prayer made in the writ petition is to issue a Writ of Mandamus, directing respondents 1 to 4 herein to remove the encroachments made by respondents 5 and 6 herein on the public road, Kanmai situated and comprised in S.No.712/6 to the extent of 0.19.0 Hectare classified as Road, comprised in S.No.711/3, admeasuring 0.06.0 Hectare classified as Road, comprised in S.No.697/4, admeasuring 2.25.0 Hectare classified as Odai and comprised in S.No.697/3, admeasuring 0.44.0 Hectare classified as Parai (rock), Gonur East Village, Mettur Taluk, Salem District and consequently direct them to maintain the public road in proper manner.

3. According to the petitioner, a public road connecting Salem to Mettur Main Road and Mettur to Andikarai Main Road, is situated in S.Nos.712/6 and 711/3 admeasuring 0.19.0 Hectares and 0.06.0 Hectares respectively in Gonur East Village, Mettur Taluk, Salem District and the same is being used by all the general public. While being so, respondents 5 and 6, who are having agricultural lands in S.Nos.695/1, 696/4B, 696/1A, 1C, 2A, 2B, 3D-1, 712/4B, 697/1, 697/2, 711/2A and 711/2B totally measuring about 25 acres, have encroached the said road by feet by feet, due to which, the width of the road was reduced into 10 feet. As per FMB Plan, the width of the road is 42 feet. Apart from that, the Odai in S.No.697/4 and the Parai (rock) in S.No.967/3 of the same area have been encroached by the private respondents. Hence, the public have made several representations to respondents 1 to 4 to remove the said encroachments. However, till date, no steps have been taken by the authorities concerned in this regard. Therefore, the petitioner is before this Court with this writ petition.

4. When the matter came up for hearing on 30.03.2016, this Court directed the first respondent to file an affidavit indicating as to whether the officers responsible to maintain the Government land and public road failed to discharge their duty and are liable to be proceeded against under Service Rules and further, what steps have been taken to remove the alleged encroachments. Pursuant to the same, a direction was issued to the Tahsildar, Mettur Dam, Salem District to measure the petition mentioned property and submit a report with regard to encroachments made by respondents 5 and 6 herein. Accordingly, the Tahsildar, Mettur Dam, Salem District filed his report dated 14.07.2016 before this Court.

5. It is stated in the said report, dated 14.07.2016 that as per the direction of this Court, notice was served on the 5th and 6th respondents on 11.07.2016 for measuring the property. Thereafter, survey work was conducted and boundary stone was laid on 13.07.2016. The report further stated that respondents 5 and 6 are rich pattadars owning lands in Gonur East Village vide Patta no.239 Extent: 4.36.00 Hectare; patta No.2604 Extent: 0.29.5 Hectare and Gonur West Village Patta No.157 Extent: 0.93.5 Hectare; Patta No.1781 Extent: 1.75.0 Hectare; Patta No.1780 Extent: 1.43.0 Hectare; Patta No.362 Extent: 1.95.5 Hectare totally measuring to an extent of 10.71.0 Hectares or 26.45 acres in both the villages. It is also pointed out therein that as per Encroachment Act, 1905, No.7 Notice has already been issued to the 5th and 6th respondents. As per the report, the encroachment details are as under:

Sl.No	S.No.	Extent	Classification	Part	Extent of Encroachment (Hec)	Way of encroachment (Hec)	Encroachers Name
Gonur East Village							
1	711/3	0.06.0	Road	I	0.00.5	Yield Coconut	1.Chinnamma l
				II			
				III	0.00.5	Tree-7 Young	W/o.Kandasamy
				Total	0.01.0	Coconut	2.Parimala W/o.Sakthivel
					0.02.0	Tree-1	
2	712/6	0.19.0	Road	I	0.09.5	Yield Coconut	1.Chinnamma l
				II			
				Total	0.01.0	Tree-22 Young	W/o.Kandasamy
					0.10.5	Coconut Tree-4	2.Parimala W/o.Sakthivel
Gonur West Village							
3	697/3	0.44.0	Rock	I	0.22.0	Yield coconut	1.Chinnamma l
				II		Tree-35	
				Total	0.04.0		W/o.Kandasamy
					0.26.0		2.Parimala W/o.Sakthivel

Sl.No	S.No.	Extent	Classification	Part	Extent of Encroachment (Hec)	Way of encroachment (Hec)	Encroachers Name
4	697/4	2.25.0	Odai	I	0.03.5	Yield coconut Tree-5	1.Chinnamma l
				II	0.53.5	Young coconut Tree-3	W/o.Kandasa my
				III	0.39.5	Cultivation	2.Parimala W/o.Sakthivel
				IV	0.09.0	Yield coconut tree-6	Janaki W/o.Krishna n
				V	0.11.5	Yield coconut Tree-11	Mohan, S/o. K.V.Krishna n
				VI	0.04.5	Yield coconut Tree-1	Velayutham S/o.Manicka m
						Neem Tree young - 4	Chinnaponnu W/o.Ramasam y
				Tota l	1.21.5		

6. From the report of the Tahsildar, Mettur Dam, Salem District, it is seen that respondents 5 and 6 have made encroachments in S.Nos.711/3, 712/6, 697/3 and 697/4. After conducting survey and taking measurement, notice under Section 7 of the Land Encroachment Act, 1905 has also been issued to them. Therefore, it is for respondents 5 and 6 to remove the encroachments within a reasonable time.

7. Accordingly, we direct respondents 5 and 6 to remove the encroachments made by them within a period of three months from today i.e., 18.07.2016. The petitioner can also very well be present at the time of removal. To facilitate the process of removal of encroachments, the petitioner as well as respondents 5 and 6 shall engage the Technical Expert, if required, on their own costs. It is also made clear that the expenses incurred for removal of such encroachments shall be borne out by respondents 5 and 6. Insofar as other encroachments are concerned, the land owner can remove the same or otherwise, the respondent concerned

shall do the needful, in accordance with law.

8. Accordingly, the writ petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

- 1.The District Collector,
Salem District, Salem.
 - 2.The District Revenue officer,
Office of the District Collectorate,
Salem District, Salem.
 - 3.The Revenue Divisional Officer,
Office of the Revenue Divisional officer,
Mettur Dam, Mettur Taluk,
Salem District.
 - 4.The Tahsildar,
Office of the Tahsildar,
Mettur Dam, Mettur Taluk,
Salem District.
- + 1 cc to M/s.Sai Bharath and Ilan, Advocate Sr 40314
+ 1 cc to M/s.A.Sundaravadanam, Advocate Sr 40024
+ 1 cc to The Govt.Pleader, Sr 40255

KR/4/8/16

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