

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.27561 of 2015  
and  
MP.No.1 of 2015

1.E.Kasi  
2.M.Munisamy  
3.S.Venkatesan  
4.S.Vinayagam  
5.R.Selvi  
6.G.Kanagammal  
7.S.Chitra  
8.M.Thanjammal

... Petitioners

Vs.

1. The Assistant Engineer,  
Public Works Department (WRO)  
(Irrigation Section)  
Gudiyatham Taluk,  
Vellore District.
2. The District Collector,  
Vellore District, Vellore.
3. The Tahsildar,  
Gudiyatham Taluk,  
Gudiyatham, Vellore District.
4. The Inspector of Police,  
Gudiyatham Taluk Police Station,  
Gudiyatham, Vellore District.
5. The Village Administrative officer,  
Agaravaram Village,  
Gudiyatham Taluk,  
Vellore District.
6. The Panchayat President,  
Agaravaram Village Panchayat,  
Gudiyatham Taluk,  
Vellore District.

7. G.Raman

R7 impleaded as per the order of this Court  
dated 01.02.2016 made in MP.No.2 of 2015

... Respondents

Writ petition has been filed under Article 226 of the Constitution of India praying for a Writ of mandamus, forbearing the respondents herein, their men and subordinates or any other persons authorized by them from interfering with the peaceful possession of the petitioners' Houses bearing Door Nos.1/355, 158/B-450, 1/416, 1/412, 420, 462, 155-A, 20 in Survey No.83 situated at Agaravaram Village, Gudiyatham Taluk, Vellore District without following due process of law.

For Petitioner : Mr.C.Prakasam

For R1 to R6 : Mr.P.Sanjay Gandhi,  
Additional Government Pleader

For R7 : Mr.K.A.Ravindran

#### ORDER

The petitioner has come up with the present writ petition for a mandamus, forbearing the respondents herein, their men and subordinates or any other persons authorized by them from interfering with the peaceful possession of the petitioners' Houses bearing Door Nos.1/355, 158/B-450, 1/416, 1/412, 420, 462, 155-A, 20 in Survey No.83 situated at Agaravaram Village, Gudiyatham Taluk, Vellore District without following due process of law.

2.The case of the petitioners in brief is as follows:

2.1 The petitioners have been in possession and enjoyment of the houses in S.No.83, Agravaram Village, Gudiyatham Taluk, Vellore District and they are residing in the said Village along with their family members for the past 50 years. They were issued with Family Card, Voter Identity Card, Aadhar Card and also the Electricity Connections for their houses by the authorities concerned. The petitioners have also paid property tax and B Memo charges to the Revenue authority. While so, the respondents intended to remove the superstructure of the premises on 02.09.2015 without following due process of law, at the instigation of local real estate promoters.

2.2 The said real estate promoters owned a property in S.No.83 measuring an extent of 5 acres near the petitioners' houses and they have approached the respondents and made demand to remove the petitioners' houses with intention to get way to reach their layout land, due to which, the respondents have

taken steps to remove the petitioners' houses, without issuing any prior notice to them. Such act of the respondents is only for personal gain from the real estate promoters and not for any public purpose or public interest and therefore, the same is illegal and against the principles of natural justice.

2.3 Since the petitioners are poor daily coolies and living below the poverty line and they do not have any other alternative house or land property except the above said houses, in order to protect their interest, they made several representations to the higher authorities and also to the Chief Minister's Special Cell, requesting not to disturb them except under due process of law. However, the said request was not considered by the respondents. Therefore, the petitioners have no other alternative except to approach this Court with the present writ petition for the above stated relief.

3.The learned counsel for the petitioner and the learned Additional Government Pleader for the respondents 1 to 6 made their respective contentions.

4.The newly impleaded seventh respondent stated as follows:

4.1 The petitioners have encroached the water channel in S.No.83 to an extent of nearly 0.25.0 Hectare and constructed houses, which prevented and obstructed the flow of water to his land. Hence, he made several representations to respondents 1 to 6, requesting to remove such encroachment. Since no action has been taken, the seventh respondent approached this Court by way of WP.No.10323 of 2015, praying a writ of mandamus, directing the respondents therein to take action on his representations to remove the encroachments in Perumbodi River Channel situated in S.No.83, Perumbodi Village, Gudiyatham Taluk, within a stipulated time. The said writ petition was disposed of by the Division Bench of this Court by order dated 27.04.2015, wherein, it has been observed as follows:

"...it is found that Notice under section 6 of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act 2007 in Form III has been issued, as per which, the encroacher is required to submit his reply and remove the encroachment and if the same is not done within a period of 21 days, the Station House officer of the Police Department shall provide adequate police personnel for the removal of encroachment by the authorities. In that view of the matter, we are not inclined to pass any further order, at this stage expecting that the authorities will take the notice to its Logical conclusion within the specified statutory period."

4.2 As per the said order, the encroacher will be issued notice in Form III by the authorities by following due

process of law to evict them. The authorities represented in the said writ petition before this Court that the encroachment would be removed.

4.3 Pursuant to the said Division Bench order, the seventh respondent made a representation dated 06.08.2015 to the respondents requesting to remove the encroachment and he received a reply dated 26.08.2015 from the respondents that they have taken steps to remove the encroachment. Thereafter, the first respondent sent a communication to the seventh respondent's counsel on 02.09.2015 stating that the writ petitioners have obtained an interim order of status quo from in any way disturbing their possession and in view of the same, they have stopped to remove the encroachment. It is further stated in the said communication that the respondents would issue Form III and remove the encroachment by following due process of law. Therefore, the seventh respondent has filed M.P.No.2 of 2015 to implead him as party respondent and prayed to vacate the interim order granted in favour of the writ petitioners.

5.I have considered the submissions made by all the parties and perused the materials placed before this Court.

6.Considering the facts and circumstances of the case and also taking into account the submissions made on either side, this Court is of the view that the subject matter of the writ petition has already been dealt with by the Division Bench of this Court in WP.No.10323 of 2015 and hence, the prayer sought for by the petitioners cannot be granted. However, it is made clear that the respondents shall not evict the petitioners from their houses without following due process of law and the respondents shall issue notice before taking any action against the petitioners. Further, the respondents are directed to take action in respect of the property in S.No.83, Agravaram Village, Gudiyatham Taluk, Vellore District only in accordance with the direction issued by the Division Bench of this Court in the order dated 27.04.2015 made in WP.No.10323 of 2015.

7.With the above observation, the writ petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-  
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Assistant Engineer,  
Public Works Department (WRO)  
(Irrigation Section)  
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Agaravaram Village,  
Gudiyatham Taluk, Vellore District.
6. The Panchayat President,  
Agaravaram Village Panchayat,  
Gudiyatham Taluk, Vellore District.

+1cc to Mr.K.A.Ravindran, Advocate, S.R.No.6344

+1cc to Mr.C.Prakasam, Advocate, S.R.No.6718

W.P.No.27561 of 2015

KK(CO)  
CA(03/03/2016)

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