

In the High Court of Judicature at Madras

Dated: 14.03.2015

Coram:

The Hon'ble Mr.Justice SATISH K. AGNIHOTRI
and
The Hon'ble Mr.Justice M.VENUGOPAL

W.P.No.39777 of 2015

Chellamuthu

...Petitioner

Vs.

1. The District Collector
Perambalur District,
Permbalur.

2. The Revenue Divisional Officer,
Perambalur,
Permbalur District

3. The Tahsildar,
Aalathur Taluk,
Permbalur District

4. Venkatachalam

5. Elango

(Respondents 4 and 5 are
impleaded as per order
dated 26.02.2016 by

SKAJ., and MVJ., in WMP No.5219
of 2016 in W.P.No.39777 of 2015)

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to remove the encroachments in Survey No.510/15, in Kolakkanatham Village, Aalathur Taluk, Permbalur District to an extent of 00649 Sq.M classified as Kuttai (Kulam) pursuant to the order passed in Na.Ka.A4/5775/2014 dated 17.11.2014 on the file of the 2nd respondent herein.

For Petitioners : Mr.S.Sairaman & Mr.M.Murali
For Respondents : Mr.P.S.Sivashanmuga Sundaram
1 to 3 : Special Government Pleader
For Respondents : Not ready in Notice
4 and 5 : (Steps not taken)

O R D E R

[Judgment of the Court was Delivered By
M.VENUGOPAL, J.]

The Petitioner has preferred the instant Writ Petition praying for passing of an Order by this Court in directing the Respondents to remove the encroachment in Survey No.510/15 in Kolakkanatham Village, Aalathur Taluk, Permbalur District measuring an extent of 00649 sq.mtr classified as Kuttai (Kulam), pursuant to the Order passed in Na.Ka.No.A4/5775/2014 on the file of the 2nd Respondent/Revenue Divisional Officer, Permbalur, Permbalur District.

2. According to the Petitioner, he made a representation dated 22.09.2014 to remove the encroachment in Survey No.510/15 measuring an extent of 0.02 cents in Patta No.582 of Kolakkanatham Village, which is classified as Kuttai/Kulam in the water body after cancelling the patta in the name of the individual concerned.

3. The stand of the Petitioner is that the 2nd Respondent / Revenue Divisional Officer, Permbalur District on receipt of the representation of the petitioner dated 22.09.2014 had called for a report from the 3rd Respondent/Tahsildar, Attur Taluk, who furnished a report to the 2nd Respondent/Revenue Divisional Officer, Perambalur on 10.11.2014. As a matter of fact, the 2nd Respondent / Revenue Divisional Officer, Permbalur, Permbalur District after conducting a detailed enquiry cancelled the Patta No.582 by means of a proceedings dated 17.11.2014 and ordered removal of encroachment. Indeed, the said Order of the 2nd Respondent dated 17.11.2014 was not challenged and the same had become final.

4. The principal grievance of the Petitioner is that even after passing of an Order dated 17.11.2014 by the 2nd Respondent/Revenue Divisional Officer, Perambalur, no action was taken by the Respondents to remove the encroachment in question. Furthermore, on 16.07.2015, the Petitioner made an application

through his counsel (under the Right to Information Act, 2005) before the 1st Respondent seeking information in regard to the removal of encroachment pursuant to the Order passed by the 2nd Respondent.

5. The Learned Counsel for the Petitioner submits that the Information Officer attached to the 3rd Respondent/Tahsildar, Attur Taluk, Perambalur District furnished the information by means of a proceedings dated 18.08.2015 stating that the encroachment was removed. Subsequently, the Petitioner inspected the place on 24.08.2015 and found that the encroachment was in existence and also enclosed a photograph dated 24.08.2015 in this regard.

6. The Learned Counsel for the Petitioner contends that if the encroachment in issue, is not removed from the water body, the water course would be stopped resulting in stagnation of water, posing a health hazard etc.,

7. The Learned Special Government Pleader for Respondents 1 to 3 submits that the Petitioner is none other than elder brother's son of the deceased one Rajamani (since the deceased) and further he owns a property in Survey No.510/20 adjoining the Survey No.510/25 and in between the aforesaid Survey Numbers, the Survey No.510/19 is situate which is classified as 2C in the Village Accounts. Moreover, the Petitioner had purchased the land comprised in Survey No.510/20, which was assigned to one Krishnasamy S/o Duraisamy on 30.09.1976 by the then, Tahsildar, Perambalur. Also, in the Sale Deed dated 14.07.1983, the Petitioner allegedly had included an extent comprised in Survey No.510/19 (classified as 2C).

8. Apart from the above, the Learned Special Government Pleader brings it to the notice of this Court that there is long standing dispute between the Petitioner and Venkatachalam, Elango viz., Legal Heirs of Original Assignee, Rajamani and Selvaraj, the alleged occupant of the property. Furthermore, the said Selvaraj gave a complaint against the father of the Petitioner and others before Maruvathur Police Station as per FIR No.4274107 dated 13.06.2014 and therefore, the Petitioner is making hectic attempts to see that the alleged encroachment in Survey No.510/15 is removed.

9. At this stage, it is represented on behalf of the Respondents 1 to 3 that Public Information Officer/ Headquarters Deputy Tahsildar passed a bonafide impression and inadvertently had replied to the effect that "the encroachment in Survey No.510/15 was removed" and based on the said information, the Petitioner has filed the instant Writ Petition before this court.

10. As far as the present case is concerned, it transpires that the Original Assignee of the land relating to S.No.510/25 namely, Venkatachalam and Elango had filed the suit in O.S.No.642 of 2014 on the file of the learned District Munsif, Perambalur and the same is pending. Also that, one Selvaraj alleged to be the occupant of the land in dispute has filed an Appeal before the 1st Respondent/District Collector, Perambalur as against the Order of the Sub-Collector, Perambalur. In this connection, a plea is taken on behalf of the Respondents 1 to 3 that because of the pendency of the Civil Suit in O.S.No.642 of 2014 before the Trial Court and also because of the pendency of the Second Appeal on the file of the 1st Respondent/District Collector, Perambalur District, the Respondents could not initiate further action.

11. On a careful consideration of the respective contentions and also this Court taking note of the entire conspectus of the attendant facts and circumstances of the present case in an integral manner and also bearing in mind a very primordial facts that a Civil Suit in O.S.No.642 of 2014 is pending on the file of the learned District Munsif, Perambalur and also pendency of Second Appeal before the 1st Respondent / District Collector, Perambalur District, comes to a consequent conclusion that the Petitioner is to await for the outcome of the decision in the aforesaid pending suit in O.S.No.642 of 2014 on the file of Trial Court and that of the pending Second Appeal before the 1st Respondent. It is to be remembered that only because of the pendency of the aforesaid suits and also because of the pendency of the Second Appeal before the 1st Respondent, the Respondents could not proceed any further in regard to the removal of encroachment and their actions could not be found fault with. Viewed in that perspective, the Writ Petition is devoid of merits.

12. In fine the Writ Petition is dismissed, leaving the parties to bear their own costs.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

ssd

To

1. The District Collector
Perambalur District,
Permbalur.
2. The Revenue Divisional Officer,
Perambalur,
Permbalur District
3. The Tahsildar,
Aalathur Taluk,
Permbalur District

1 cc to Mr.V. Illenchezian, Advocate, Sr. 16252

W.P.No.39777 of 2015

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