



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 12.08.2016

CORAM :

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO
and
THE HONOURABLE MR.JUSTICE S.S.SUNDAR

Writ Petition (MD)No.14889 of 2016 &
WMP(MD)Nos.10990 & 10991 of 2016

P.Subbiah

...Petitioner

-Vs-.

The Block Development Officer,
Village Panchayat,
Karungulam Panchayat Union,
Seithunganallur,
Srivaikundam,
Tuticorin District.

... Respondent

Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records on the file of the respondent pertaining to its proceedings bearing No.Thi3/888/15 dated 01.08.2016 and Thi3/888/15 dated 04.08.2016 and to quash the same and pass further orders as this Court may deem fit and proper.

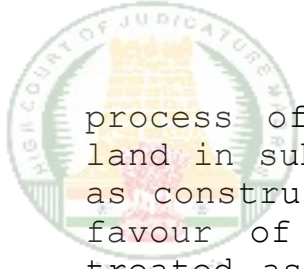
For Petitioner	: Mr.S.C.Herold Singh
For Respondent	: Mr.A.K.Baskara Pandian Special Government Pleader.

ORDER

(Order of the Court was made by NOOTY.RAMAMOHANA RAO,J)

The petitioner herein has been put on notice for removal of encroachments made by him by making certain constructions in the land falling in Survey No.1988/18 at Ramanujanpudur Village, Srivaikundam Taluk, Karunkulam Panchayat Union. He disputes such an assertion of fact. He further asserts that he has been granted a patta over 0.03.06 hectares of land lying in Survey No.1988/17 and it is his further assertion that he has not encroached upon the land lying in sub-division No.1988/18 and hence he disputes the right of the respondent to remove the construction made by the petitioner in the land over which he was granted patta and lying in Survey No.1988/17.

<https://hcservices.courts.tn.in/hcservices> The issue centers us around the fact whether the petitioner has made constructions in the land over which he was granted patta, which land was lying in Survey No.1988/17 or in the



process of making construction he has also encroached upon the land in sub-division 1988/18. It goes without saying that so long as constructions stand over the land in which patta was issued in favour of the petitioner herein, such constructions cannot be treated as encroachment. It would be a different matter if such constructions are contrary to any building plan different kind of action is required to be initiated making such construction to fall in conformity of the requirements of law. But, once the allegation against the petitioner made is that he has encroached upon, certain extent of land it presupposes that the petitioner has not confined the constructions made by him within the limit of the lands in Survey No.1988/17 over which he was granted patta but the construction has also been made over a part of the land in sub-division 1998/18.

3. Normally, such a factual controversy can be resolved by collecting evidence, both oral and documentary. Such collection of evidence cannot be resorted to, normally in a writ jurisdiction. It is a matter of convenience that oral and documentary evidence is capable of collected before the civil Court which will properly analyze the evidence and then it would be in a better position to render a finding of fact as to whether the constructions made by the petitioner are lying either in sub-division 1988/17 or in 1998/18 or partly in both the survey numbers.

4. For all the aforesaid reasons, while preserving the liberty to the petitioner to approach the competent civil Court having jurisdiction and establish the fact that he has not encroached upon the land lying in Survey No.1988/18, the writ petition is dismissed at the admission stage. No costs. Consequently, the connected Miscellaneous petitions also stand dismissed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

TO

The Block Development Officer,
Village Panchayat, Karungulam Panchayat Union,
Seithunganallur, Srivaikundam,
Tuticorin District.

+ 1 CC TO MR.S.C.HEROLD SINGH, ADVOCATE IN SR No. 44234

GSR

TE/KP : 01/09/2016 : 2P/3C