

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.08.2017

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

WP.No.23113/2017

M.S.Babu

.. Petitioner

Versus

- 1.The District Collector,
Tiruvannamalai District,
Tiruvannamalai.
- 2.The Tahsildar
Tiruvannamalai.
- 3.The Commissioner
Tiruvannamalai Municipality
Tiruvannamalai.
- 4.The Chairman
Tiruvannamalai Municipality
Tiruvannamalai.
- 5.The Divisional Engineer,
Highways Department
Operation and Maintenance
Tiruvannamalai.

- 6.Muniyammal
- 7.Thirumannan
- 8.Sekar
- 9.Ambedkar
- 10.Sureshkumar

.. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the respondents 1 to 5 to remove the encroachments in the public street at Ramji Nagar, Thiruvannamalai.

For Petitioner : Mr.G.Rajan
For RR 1, 2 & 5 : Mr.P.Sanjay Gandhi,AGP
For RR 3 & 4 : Mr.A.S.Thambuswamy

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

By consent, the writ petition is taken up for final disposal. Mr.P.Sanjay Gandhi, learned Additional Government Pleader accepts notice on behalf of the respondents 1, 2 and 5 and Mr.A.S.Thambuswamy, learned Standing counsel accepts notice on behalf of the respondents 3 and 4.

2 The petitioner, on an earlier occasion, filed WP.No.11804/2014 against the respondents herein, praying for issuance of a writ of mandamus, directing the Commissioner, Tiruvannamalai Municipality, Tiruvannamalai District, to remove the illegal encroachments made by the private respondents therein, viz., respondents 5 to 15 therein, in Municipal Street, at Ramji Nagar, Tiruvannamalai, in accordance with law and this Court, vide order dated 12.06.2015, has disposed of the said writ petition, by directing the respondents 1 and 2 therein to have a proper spot inspection and thereafter, issue appropriate direction to the concerned authorities including the Municipality to initiate action for removal of the alleged encroachment by putting the encroachers on notice before taking any action and also stipulated a time before which, the action to be taken. The petitioner, alleging violation of the said order, filed Cont.P.No.2441/2015 and in the said contempt petition, the Collector of Tiruvannamalai District, has filed the Compliance Report dated 02.03.2016 and it is relevant to extract the same:-

"Amidst aforesaid inevitable circumstances, I respectfully submit that I have conducted the enquiry with all private respondents S.Nos.5 to 15 and have passed orders on 19.02.2016 after following the due process of law. I further humbly submit after passing orders, I have directed the Commissioner to take action for removal of encroachment with police protection as there are several encroachers protesting eviction and created law and order issues. I humbly submit that the Municipal Commissioner with the help of police have removed all the encroachments on 25.02.2016. I am enclosing the photographs for kind perusal of the Hon'ble Division Bench."

3 The grievance now expressed by the petitioner is that though the encroachments have been removed, fresh encroachments

had cropped up and in this regard, the petitioner has once again submitted a representation dated 27.06.2016 to the 1st respondent as well as to the other respondents and the 5th respondent vide Memo No.487/2016/A1 dated 01.07.2016 has directed the Assistant Divisional Engineer, Highways, Tiruvannamalai, to take appropriate action. The petitioner thereafter submitted reminder representations dated 13.07.2016 and 02.08.2017 respectively to remove the encroachment stating that on account of encroachment, his access to his residence has been obstructed / denied and though the said representations have been received and acknowledged, no response is forthcoming and hence, the petitioner came forward to file the present writ petition.

4 The learned counsel for the petitioner would submit that it is also the duty of the local body and other official respondents to prevent encroachments on a public land / road / pathway and the official respondents have failed to discharge their duties properly and therefore, the petitioner is left with no other option except to file the present writ petition.

5 Per contra, Mr.P.Sanjay Gandhi, learned Additional Government Pleader appearing for the respondents 1, 2 and 5 would submit that appropriate remedial action will be taken in accordance with law at the earliest possible time.

6 Mr.A.S.Thambuswamy, learned Standing Counsel appearing for the respondents 3 and 4 on instructions, would submit that when attempts were made to remove encroachments, some of them threatened to commit suicide and in this regard, a complaint was also lodged to the jurisdictional police to give adequate police protection and however, no response is forthcoming and prays for appropriate direction.

7 This Court has considered the rival submissions and also perused the materials placed before it.

8 It is relevant to extract section 133 of the Code of Criminal Procedure, 1973:-
133. Conditional order for removal of nuisance

(1) Whenever a District Magistrate or a Sub-divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, considers-

(a) that any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public; or

(b) that the conduct of any trade or occupation or the keeping of any goods or merchandise; is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated; or

(c) that the construction of any building, or the disposal of any substance, as is likely to occasion conflagration or explosion, should be prevented or stopped; or

(d) that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary; or

(e) that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public; or

(f) that any dangerous animal should be destroyed, confined or otherwise disposed of, such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order—

(i) to remove such obstruction or nuisance; or

(ii) to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation, or to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed; or

(iii) to prevent or stop the construction of such building, or to alter the disposal of such substance; or

(iv) to remove, repair or support such building, tent or structure, or to remove or support such trees; or

(v) to fence such tank, well or excavation; or

(vi) to destroy, confine or dispose of such dangerous animal in the manner provided in the said order; or, if he objects so to do, to appear before himself or some other Executive Magistrate subordinate to him at a time and place to be fixed by the order, and show cause, in the manner hereinafter provided, why the order should not be made absolute

(2) No order duly made by a Magistrate under this section shall be called in question in any civil court."

9 As per section 133[1] Cr.P.C., a District Magistrate or a Sub-divisional Magistrate or any other Executive Magistrate, is empowered by the State Government on receiving the report of a police officer or other information and on taking such evidence, if any, as he thinks fit, considers (a) that any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public, can do so.

10 In the light of the submission made by the learned Standing counsel appearing for the respondents 3 and 4, the Superintendent of Police, Tiruvannamalai District, shall look into the complaint given by the 3rd respondent and afford adequate protection to the 3rd respondent / Revenue Officials for the purpose of removal of encroachments and it is needless to state that the said exercise is to be carried out in accordance with law, after providing opportunity to the alleged encroachers. The said exercise is to be completed within a period of ten weeks from the date of receipt of a copy of this order and the decision taken in that regard, shall be communicated to the petitioner as well as to the alleged encroachers.

11 The writ petition stands disposed of with the above direction. No costs.

sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

To

1.The District Collector,
Tiruvannamalai District,
Tiruvannamalai.

2.The Tahsildar
Tiruvannamalai.

3.The Commissioner
Tiruvannamalai Municipality
Tiruvannamalai.

4.The Chairman
Tiruvannamalai Municipality
Tiruvannamalai.

5.The Divisional Engineer,
Highways Department
Operation and Maintenance
Tiruvannamalai.

Copy to:-

The Superintendent of Police
Tiruvannamalai District.

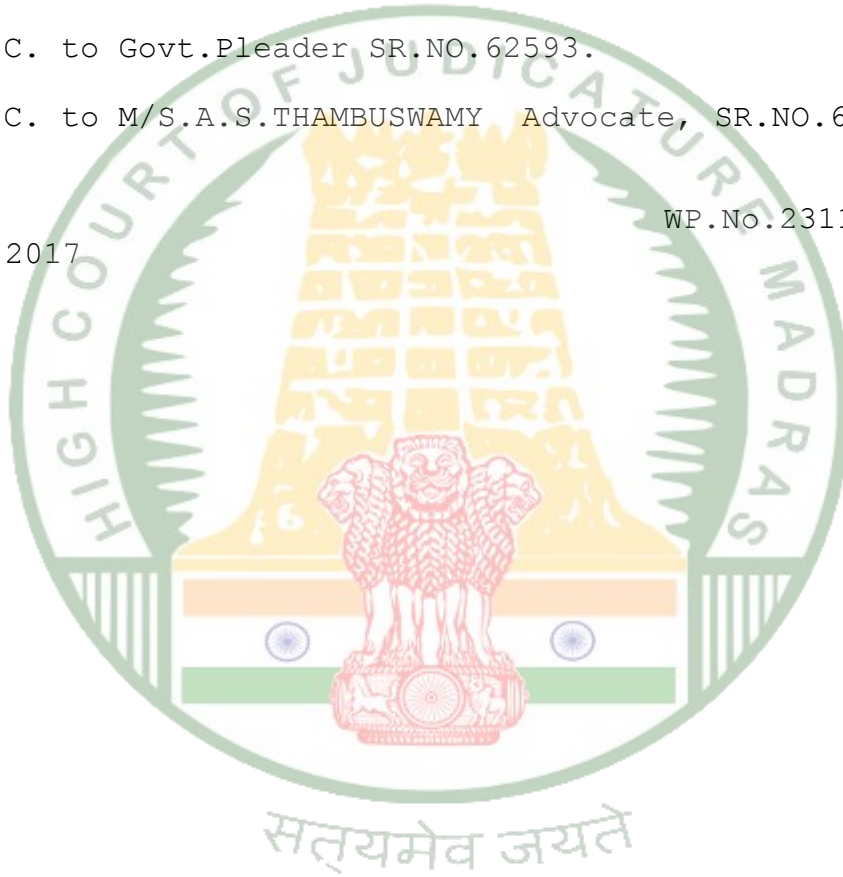
+1 C.C. to M/S.G.RAJAN Advocate, SR.NO.61828

+1 C.C. to Govt.Pleader SR.NO.62593.

+1 C.C. to M/S.A.S.THAMBUSWAMY Advocate, SR.NO.62027

ADD 06.10.2017

WP.No.23113/2017



WEB COPY