



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

AND

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. (MD) No.20175 of 2015

K.Raja

: Petitioner

.vs.

1.The Tahsildar,
Madurai North Taluk,
Collectorate Buildings,
Madurai - 625 020,
Madurai District.

2.M.Sundari @ Angalaeswari

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying this Court for issuance of a Writ of Mandamus directing the first respondent to consider the Petitioner's representation dated 30.09.2015 to remove the encroachment made by the second respondent in Government Poramboke lane comprised in R.S.No.247/18, Thenur Village-II Bit, Samayanallur Firka, Madurai North Taluk, Madurai District, within the time frame fixed by this Court.

For Petitioner	:M/s.M.Ponniah
For Respondent-1	:Mr.T.R.Janarthanan
	Additional Govt.Pleader
For Respondent-2	:No appearance

O R D E R

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

The Petitioner has filed the present Writ Petition praying for passing of an order in directing the first respondent/The Tahsildar, Madurai North Taluk, Collectorate Buildings, Madurai to consider his representation, dated 30.09.2015 to remove the encroachment made by the Second Respondent in Government Poramboke lane comprised in R.S.No.247/18, Thenur Village-II Bit, Samayanallur Firka, Madurai North Taluk, Madurai District, within the time frame to be determined by this Court.

2.Heard the Learned Counsel for the Petitioner and the Learned Additional Government Pleader appearing for the first respondent.

<https://hcservices.ecourts.gov.in/hcservices/>
3.By consent, the main Writ Petition itself is taken up for final disposal.



4.The Petitioner has come out with a stand in the present Writ Petition that his land and building comprised in R.S.No.247/16 in Patta No.416, Thenur Village-II Bit, Samayanallur Firka, Madurai North Taluk, Madurai District measures an extent of 0.00.26.0 square mtrs. In fact, the said building is utilized for his residential purpose and due to his personal inconvenience, he has transitorily residing at No.7/13, Viyasarayapuram, Agraharam, Petchiamman Padithurai, Madurai-1.

5.At this stage, the Learned Counsel for the Petitioner proceeds to point out that on the eastern side of the Petitioner's property, a common lane is running north-south and that the Petitioner and the owner in R.S.No.247/19 are in absolute possession and enjoyment of the said lane for the purpose of light and air and also to maintain their properties. In reality, the said lane is in R.S.No.247/18 measuring about 0.0018.0 sq.mtrs. In fact, it is the plea of the Petitioner that the lane absolutely belongs to the Government classified as a 'Government Poramboke Lane' in revenue records. The Petitioner's version is that on the eastern side of his wall, he has windows of his house with a view to get free light and air. Similarly, the owner of the property in R.S.No.247/19, which is situated on the eastern side of the said lane, also got windows for free light and air. The Petitioner and his predecessor-in-title are said to be in continuous enjoyment of the said lane for the domestic purposes for more than the statutory period. The Learned Counsel for the Petitioner points out the Second Respondent is having her property in R.S.No.247/17 which is situated on the northern side of the lane and there is another lane running east-west on the northern side of her property. The Second Respondent is no way connected to this common lane and she was never in enjoyment of the same.

6.When that be the fact situation, the Petitioner pleads in her affidavit at Para 6 of the Writ Petition that during September 2015, the Second Respondent demolished her old residential building and she stated to construct a new residential building in her property. Taking advantage of the absence of the Petitioner, the Second Respondent had illegally encroached into the Government Poramboke lane by putting up a 'Tin Sheet Roof' and also a brick wall with gate on the southern side entrance of the lane and thereby she encroached into the common lane in R.S.No.247/18, for which, she has no manner of right whatsoever.

7.The core stand taken on behalf of the Petitioner is that the Petitioner made an application on 30.09.2015 before the First Respondent requesting the latter to take appropriate legal action against the Second Respondent with a view to evict her from the common lane and also to remove the encroached portion over the



said common lane. Even though the First Respondent had received his representation, but had not taken any legal action as against the Second Respondent in accordance with Law. That apart, the First Respondent had not sent any reply and not took any action as against the Second Respondent. Hence the Petitioner is constrained to file the present Writ Petition.

8.To lend a support to his contention that R.S.No.247/18 is classified as a 'Natham Lane', the learned Counsel for the Petitioner refers to the Adangal, dated 22.09.2015, issued by the Village Administrative Officer of Thenur-II Bit Village, Madurai North Taluk, Madurai and a glance of the same indicates that R.S.No.247/18 is a 'Natham Lane', measuring 00018.02.00 sq.mtrs.

9.Considering the fact that the Petitioner's representation, dated 30.09.2015 addressed to the First Respondent is pending as on date without any progression in the subject-matter in issue, this Court, in the interest of justice, fair play, without expressing any opinion or merits of the contents of the representation of the Petitioner, dated 30.09.2015, simpliciter directs the First Respondent to look into the representation of the Petitioner within a period of one week from the date of receipt of a copy of this order. Thereafter, the First Respondent shall, after providing opportunity to the Petitioner and the Second Respondent herein/encroacher, is to pass a speaking order on merits after adhering to the Principles of Natural Justice, within a period of three weeks thereafter. It is open to the Petitioner to raise all factual and legal pleas before the First Respondent, who shall take into account of the said pleas and by adverting to the same, shall pass a reasoned speaking order, both in qualitative and quantitative terms.

10.With the above said observation(s) and direction(s), the Writ Petition stands disposed of. No costs.

Sd/-

Assistant Registrar

/True copy/

Sub Assistant Registrar

To
The Tahsildar,
Madurai North Taluk,
Collectorate Buildings, Madurai - 625 020, Madurai District.
+1cc to Mr.M.PONNIAH, Advocate, SR. 83512
+1cc to M/S.Special Government Pleader, SR. 83635

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