



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.10.2017

CORAM:

WEB COPY

**THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE**

W.P.(MD)No.20186 of 2015
and
M.P(MD)Nos.1 and 2 of 2015

R.Balakrishnan

: Petitioner

.vs.

1. The District Collector,
Tirunelveli District.

2. The Tashildar,
Sankarankovil Taluk,
Tirunelveli District.

: 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 respondents not to demolish the petitioner's house, brick chamber situated in Survey No.736/2A, 2B in Perumbathur Village, Sankarankovil Taluk, Tirunelveli District and evict the petitioner from the said property without following the due process of law.

For Petitioner : Mr.R.Satish
For Respondents : Mr.T.R.Janarthanan,
Additional Government Pleader

**O R D E R

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

This Writ Petition has been filed seeking issuance of a Writ of Mandamus, directing the respondents not to demolish the petitioner's house and brick chamber situated in Survey No.736/2A and 2B in Perumbathur Village, Sankarankovil Taluk, Tirunelveli District and evict the petitioner from the said property without following the due process of law.

2.Heard both sides. By consent, the main Writ Petition itself is taken up for final disposal.

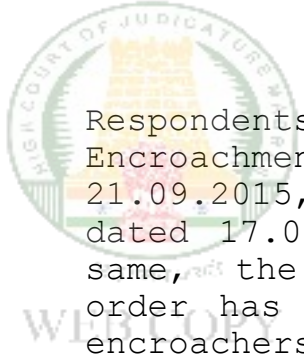


3. It comes to be known that the property situated in Survey No.736/2A and 2B Perumbathur Village, Sanakarankovil Taluk, measuring an extent of 65 cents is the Petitioner's father's ancestral property, which has been in continuous possession and enjoyment of his father, for the past forty years. Later, the Petitioner has constructed a house worth about Rs.5,00,000/- and there is a brick chamber also available in the said property. The Petitioner's house is assigned with Door No.5/192 and house tax was also paid promptly till date. That apart, electricity service connection has also been given to the Petitioner's house in service connection No.476. A ration card has also been issued in Petitioner's favour in the address furnished by him.

4. The categorical stand of the Petitioner is that during the year 2011, the second Respondent/Tahsildar, Sankarankovil Taluk, Tirunelveli District had also issued a notice to his father stating that the house and other occupation made in the property is an encroachment and asked them to remove the said encroachment. Thereafter, the Petitioner had laid a civil suit in O.S.No.74 of 2011 on the file of the Learned Principal District Munsif, Sankarankovil, against the Respondents for the relief of permanent injunction and for their peaceful possession in Survey No.736/2A and 2B. The said suit came to be decreed on 09.04.2013 in favour of the Petitioner. After obtaining a decree in O.S.No.74 of 2011 on the file of the trial Court, the Petitioner is in peaceful possession and enjoyment of that property.

5. It transpires that on 21.09.2015, the Revenue Inspector, Sankarankovil, issued a notice stating that the Petitioner had encroached the property in Survey No.736/2A and 2B and further asked him as to why he should not be evicted from the property in question and also why his house and brick chamber should not be removed. In fact, he had submitted his objections before the Respondents on 03.10.2015. Even thereafter, the arguments advanced on behalf of the Petitioner is that the Respondents without considering his objections and without passing any eviction order have attempted to demolish his house and brick chamber in the name of encroachment on 03.11.2015. However, due to rain, the demolition work was temporarily stopped. Under these circumstances, the present Writ Petition is filed against the Respondents seeking not to demolish the Petitioner's house and brick chamber situated at Survey No.736/2A, 2B in Perumbathur Village, Sankarankovil Taluk, Tirunelveli District and not to evict him from the said property without following the due process of law.

6. In response, it is the submission of the Learned Additional Government Pleader that as per Section 14 of the Tamil Nadu Land Encroachment Act, 1905, there is a bar of civil Court jurisdiction to grant any relief against the Authority and therefore, the decree obtained by the Petitioner in O.S.No.74 of 2011 will be of any use to the Petitioner. That apart, it is projected on the side of the



Respondents that as per Section 7 of the Tamil Nadu Land Encroachment Act, 1905, a notice was issued to the Petitioner on 21.09.2015, as per the direction of the Honourable Division Bench dated 17.04.2015 in W.P(MD)No.5813 of 2015 and on receipt of the same, the Authority has to pass necessary orders and till date, no order has been passed. Moreover, there was a meeting with the encroachers and out of 25 encroachers, 23 encroachers had accepted and removed the entire encroachment and therefore, no order was passed for eviction on 03.11.2015.

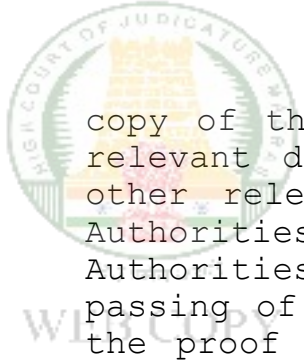
7. The Learned Additional Government Pleader appearing for the Respondents brings it to the notice of this Court that in M.P(MD)No.1 of 2015 in W.P(MD)No.20186 of 2015, there is an interim order of injunction against the Respondents and as such, the Respondents are handicapped in proceeding further in the subject matter in issue.

8. The Learned Additional Government Pleader appearing for the Respondents proceeds to point out that the Petitioner's encroachment is in the midst of water course by making obstruction by storing enormous earth materials like sand etc., and in fact, G.O.Ms.No.540 provides a guideline and mechanism for removal of encroachment.

9. This Court heard the Learned Counsel appearing for the Petitioner and the Learned Additional Government Pleader appearing for the Respondents and noticed their contentions.

10. Notwithstanding the fact that the Petitioner as a plaintiff had secured a decree for injunction in O.S.No.74 of 2011 in his favour, which was granted on 09.04.2013, this Court is of the considered view that as per Section 14 of the Tamil Nadu Land Encroachment Act, 1905, there is a bar of civil Court jurisdiction for grant of any relief against the Authority. Therefore, this Court is of the considered view that the Authorities can bypass the tenor and spirit of the decree by also bearing in mind that this Court in W.P(MD)No.5813 of 2015, dated 17.04.2015 had issued necessary direction for issuance of Section 7 notice Under the Tamil Nadu Land Encroachment Act to the encroachers in question. Apart from that, out of 25 encroachers, 23 encroachers were reportedly had accepted the removal of entire encroachment and therefore, the Respondents till date has not passed the order of eviction against the concerned.

11. Considering the fact that the Petitioner in the present Writ Petition only seeks a relief of issuance of a direction by this Court to the Respondents not to demolish his house and brick chamber situated in Survey No.736/2A, 2B in Perumbathur Village, Sankarankovil Taluk, Tirunelveli District, without following the due process of law, this Court in the interest of justice and fair Play and also equity, directs the Respondents 1 and 2 to look into the objections/representation of the Petitioner and to pass necessary orders within a period of eight weeks from the date of receipt of a



copy of this order. It is open to the Petitioner to produce all relevant documents before the Respondent and also to produce any other relevant records, which he requires to furnish before the Authorities and if such documents are filed by the Petitioner, the Authorities concerned shall take note of the same at the time of passing of the order by advertg to the contents and relevancy of the proof of the documents in question, of course, in the manner known to law and in accordance with law. In any event, the second Respondent is directed to pass a full-fledged reasoned order on merits, of course a speaking order, within a period of four weeks thereafter.

12. With the above said observation(s) and direction(s), the Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
Tirunelveli District.
2. The Tashildar,
Sankarankovil Taluk,
Tirunelveli District.

+ 1 CC TO Mr.R.SATISH, ADVOCATE IN SR No. 82180
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 82661

PM

TE/KP/SAR-II : 25/10/2017 : 4P/5C

ORDER MADE IN
W.P.(MD)No.20186 of 2015 and
M.P(MD)Nos.1 and 2 of 2015
10.10.2017