



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **21.07.2017**

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P (MD) No.13540 of 2017

and

W.M.P. [MD]. Nos.10589 and 10590 of 2017

S.A.Karnan

: Petitioner

Vs.

1.The District Collector,
Ramanathapuram,
Ramanathapuram District.

2.The Commissioner,
Mandapam Panchayat Union,
Uchipuli,
Ramanathapuram District.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for records relating to the impugned proceedings issued by the second respondent In Na.Ka.No.A2/4242/2015, dated, 17.07.2017 and quash the same as illegal.

For petitioner : Mr.M.Ajmal Khan

Senior Counsel

for M/s.Ajmal Associates

For Respondent-1 : Mr.T.S.Mohamad Mohideen

Additional Government Pleader

For Respondent-2 : M/s.S.Bharathi

O R D E R

[Order of the Court was made by **G.R.SWAMINATHAN, J.**]

This writ petition has been filed questioning the proceedings in Na.Ka.No.A2/4242/2015, dated 17-July-2017, issued by the Commissioner, Mandapam Panchayat Union, Uchipuli, Ramanathapuram District, calling upon the writ petitioner to vacate the encroachment in question.

2. The writ petitioner's principal contention is that he had earlier filed W.P.[MD].No.14008 of 2016, challenging the similar action for eviction taken by the Commissioner, Mandapam Panchayat Union, Uchipuli, Ramanathapuram District / the second respondent herein and that this Court by order, dated 05-August-2016, allowed the writ petition and permitted the petitioner to serve notice on the second respondent and directed the second respondent herein to consider the same and pass appropriate orders on merits.



3. According to the writ petitioner, he submitted detailed objections vide his letter dated 24-August-2016. But, in the impugned order, absolutely, there is no consideration of the same. The learned Senior Counsel appearing for the writ petitioner further pleaded that the writ petitioner has been in occupation of the subject land for a very long time.

4. This Court went through the impugned order. The second respondent has categorically stated that sufficient time and opportunity was afforded to the writ petitioner, and yet he could not furnish any document to establish his right. Survey Numbers referred to in the impugned order are classified as cart track in the revenue records. Since the encroached area in question is a cart track occupation for whatever length of time will not confer any right on the encroacher. Encroachment of water bodies and public pathways are to be frowned upon.

5. The learned Senior Counsel strongly contended that a very lengthy explanation has been given but there is no reference or consideration of the same in the impugned order. We took pains to go through the contentions of the said explanation. The writ petitioner has stated in his objection that, he is running a tea-stall and it is of minor dimension and that his entire family is depending upon the same for sustenance. They have been in occupation since 1937.

6. The second respondent was therefore right in saying that the land in question belongs to the second respondent Panchayat Union and that since it has been classified as Cart Track, the writ petitioner's encroachment cannot be condoned. Since the writ petitioner is occupying a public pathway by putting up a tea-stall, he cannot be classified as a street vendor also. Therefore, We see no reason to interfere with the order impugned in this writ petition.

7. This writ petition is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(RTI)

/ True Copy /

Sub Assistant Registrar(C.S.)

To:

1.The District Collector, Ramanathapuram,Ramanathapuram District.

2.The Commissioner,

Mandapam Panchayat Union, Uchipuli,Ramanathapuram District.

+1cc to M/S.AJMAL ASSOCIATES, Advocate SR.No.66807

+1cc to Special Government Pleader, SR.No.67621

tsg/sm

MAS/KP/SAR2:07.08.2017:2P-5C

ORDER MADE IN

W.P.[MD]No.13540 of 2017

and

W.M.P.[MD].Nos.10589 and 10590 of 2017

21.07.2017