



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.11.2017

CORAM:

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

W.P.(MD)No.16151 of 2017

and

W.M.P(MD)No.12823 and 12824 of 2017

C.Krishnamoorthy

: Petitioner

.vs.

1. The District Revenue Officer,
Collectorate,
Trichirappalli.
2. The Revenue Divisional Officer,
Musiri, Trichy District.
3. The Tahsildar,
Thuraiyur,
Trichy District.
4. S.Thirumurugan

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying this Court for issuance of a Writ of Certiorari calling for the records of the Third Respondent in his proceedings in Na.Ka.A1/6656-2011, dated 16.08.2017 and to quash the same.

For Petitioner	: M/s.K.K.Ramakrishnan
For Respondents	: Mr.T.R.Janarthanan
1 to 3	Addl. Govt.Pleader
For Respondent-4	: M/s.V.Singan

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 Certiorari calling for the records of the Third Respondent in his proceedings in Na.Ka.A1/6656-2011, dated 16.08.2017 and to quash the same.



3. By consent, the main Writ Petition itself is taken up for final disposal.

4. The Petitioner is assailing the impugned order of the Third Respondent, dated 16.8.2017 on the ground that the same is an illegal one, besides, the same is issued without any jurisdiction.

5. According to him, the land in dispute in S.No.57/3 was originally classified as 'Natham Land' and there was no corresponding records pertaining to the conversion of the said 'Natham Land' into the 'Street' in UDR Programme and there was no correlation regarding the said conversion. Furthermore, the dispute regarding S.No.371/39 classified as 'Pathway' is pending before the First Respondent in appeal filed by the Petitioner, dated 29.8.2016. Therefore, it is represented that under such circumstances, the impugned order of the Third Respondent, dated 16.8.2017 to remove the Petitioner's cattle shed, water tank and coconut trees, which was purchased through sale deed, dated 7.7.1977 and 29.11.1978, is arbitrary one.

6. The version of the Petitioner is that the alleged presumption of pathway on the basis of disputed entry in the Natham Patta without any correlation to the existence of the pathway in the S.No.57/3, is not legally correct. Apart from that, as per the 'A' Register existed earlier to the UDR Programme, the only pathway stated in S.No.57/2 and in the aforesaid circumstances, the Petitioner was advised to file a Civil suit to remove the entries and the same was pending before the Court with impleading the both officials and Fourth Respondent without there being any decision either from the First Respondent/The District Revenue Officer, Trichirappalli or from the Civil Court. According to the Petitioner, the removal of encroachment by passing of the impugned order by the Third Respondent through proceedings, dated 16.8.2017, is an illegal one.

7. The Learned Counsel for the Petitioner emphatically points out that S.No.57/3 is classified as 'Natham Poramboke' and 'A' Register before UDR Programme was produced before the Third Respondent, but he confirmed the same. In the 'A' Register S.No.57/2 is mentioned as 'Road' and in the said circumstance, the Third Respondent ought to have conducted measurement of S.No.57/3 on the basis of 'A' Register and demarcated S.No.57/2 by conducting proper survey and if there is any encroachment as alleged by him, the Third Respondent should have removed the encroachment etc.

8. Lastly, it is the submission of the Learned Counsel for the Petitioner that without any demarcation on the basis of the fabricated Adangal Receipt containing the New S.No.371/39, as a street, on assumption without any correlation, the invocation of the encroachment proceedings will affect the Petitioner's right of enjoyment of the property, as enshrined in the Constitution of India and therefore, it is the strenuous plea of the Petitioner that



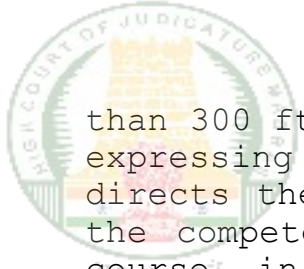
unless and until this Court directs the Third Respondent to demarcate the old S.Nos.57/2 and 57/3 on the basis of measurement in 'A' Register. It is represented on behalf of the Petitioner that the encroachment may not be removed.

9. It is the submission of the Learned Counsel for the Third Respondent that the Petitioner is fully aware of his occupation in the 'Street Poramboke' and he is running the risk of eviction at any point of time. Moreover, the present Petitioner, from para 3 to 9 had reiterated the various proceedings held before the Respondents 1 and 2 and before this Court (in W.P.No.9335 of 2011 and W.P.No.10297 of 2014). Furthermore, the only request is to change the classification of land occupied by him in S.No.371/39 from that of 'Street Poramboke' to 'Natham Manai' and grant of 'Manai Patta' to him recognizing his purchase of the land in the year 1978, which was rejected by the Second Respondent and the appeal filed by the Petitioner to the First Respondent is pending for disposal. In the meanwhile, the Petitioner's eviction from S.F.No.371/39 has been stayed by this Court, by order made in W.M.P.No.12823 of 2017 in W.P.No.16151 of 2017, dated 28.8.2017.

10. The Third Respondent/The Tahsildar, Thuraiyur, Trichy District in the counter, has come out with a plea that there is actually a 'Street' on ground running from east to west originating from the main road to a length of more than 300 ft approximate and its existence was not required to be shown separately in the Filed Sketch prior to the introduction of Natham Settlement in the year 1988. Furthermore, the Petitioner's occupation in S.F.No.371/39 is *prima facie* objectionable and therefore, the entire eviction proceedings have been vitiated.

11. Per contra, it is the submission of the Learned Counsel for the Fourth Respondent that in respect of classification of 'public street', filing of an appeal is impermissible in Law and even the pendency of the same before the District Revenue Officer (DRO) Trichirappalli is not relevant. Furthermore, it is represented on behalf of the Learned Counsel for the Fourth Respondent that if at all, the Petitioner has a remedy and if he feels that his right has been infringed, he has to agitate about his rights before the competent Civil Forum and not by way of filing the present Writ Petition. In effect, the stand of the Fourth Respondent is that the property in S.F.No.371/3 (corresponding old S.No.57/3) was wrongly classified to be a 'Street', be a matter to be agitated before the competent Civil Forum.

12. Considering the fact that the Third Respondent has come out with a categorical plea that the Petitioner's occupation in S.F.No.371/39 is a *prima facie* objectionable one and therefore the present eviction proceedings by way of impugned order, dated 16.09.2017 has been initiated by the Third Respondent and also this Court taking note of yet another fact that street on ground running from east to west originating from the main road to a length of more



than 300 ft approximate and etc, this Court, at this stage, without expressing any opinion on the merits of the matter, simpliciter, directs the Petitioner to agitate about his rights, if any, before the competent Civil Forum by instituting necessary civil suit, of course, in the manner known to Law and in accordance with Law. If the Petitioner files a Civil Suit before the competent Civil Forum, then it is open to the Respondents to take all factual and legal pleas including the aspect of limitation namely, his request to change the classification of the land in S.F.No.371/39 as that of a 'Street Poramboke' to 'Natham Manai'.

13. 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-III)

/True Copy/

Sub Assistant Registrar

To

1. The District Revenue Officer,
Collectorate,
Trichirappalli.
2. The Revenue Divisional Officer,
Musiri, Trichy District.
3. The Tahsildar,
Thuraiyur,
Trichy District.

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 89246
+ 1 CC TO Mr.K.K.RAMAKRISHNAN, ADVOCATE IN SR No. 89313

VSN

TE/SKN-RSK/SAR-3 : 19/12/2017 : 4P/6C

ORDER MADE IN
W.P. (MD) No. 16151 of 2017 and
W.M.P (MD) No. 12823 and 12824 of 2017
23.11.2017