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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 30.10.2017
CORAM:

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

W.P.(MD)No.17002 of 2017

and

W.M.P(MD)No.13573 of 2017

A.Subramani : Petitioner

vs.

1. The District Collector,
Karur District,
Karur.
2. The District Revenue Officer,
Karur District,
Karur.
3. The Tahsildar,
Kadavur Taluk,
Karur District.

4.M.Mani
5.M.Senthil : 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 1 to 3 to remove the encroachment made by the Respondents 4 and 5 in Survey No.727/1 classified as Sarkar Poramboke in Thalivasal, Mullipadi Village, Kadavur Taluk, Karur District and consequently, consider the representation of the Petitioner dated 21.08.2017.

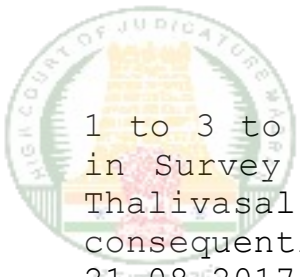
For Petitioner	: Mr.P.Arun Jayatram
For R-1 to R-3	: Mr.T.R.Janarthanan, Additional Government Pleader
For R-4 & R-5	: Mr.N.Mohideen Basha

O R D E R

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

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The Petitioner has preferred the instant Writ Petition praying for passing of an order by this Court in directing the Respondents



1 to 3 to remove the encroachment made by the Respondents 4 and 5 in Survey No.727/1, which is classified as 'Sarkar Poramboke' in Thalivasal, Mullipadi Village, Kadavur Taluk, Karur District and consequently, consider the representation of the Petitioner dated 21.08.2017.

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2. Heard both sides.

3. According to the Petitioner, he belongs to Thalivasal Village and is residing in Survey No.727/7 measuring an extent of 0.00.42 hectares and the same is classified as 'Natham Land'. In the aforesaid area, there are 27 Navithar Community persons had constructed houses and they are residing there.

4. The categorical plea taken on behalf of the Petitioner is that Survey No.727/1 is classified as 'Government Poramboke' and the afore stated people are using the said survey number as a public pathway as well as for public purpose. In fact, the Fourth Respondent is residing in Survey No.727/10 measuring an extent of 60 sq. mt., and the Fifth Respondent is residing in Survey No.727/9 measuring an extent of 45 sq. mt.

5. At this stage, the Learned Counsel for the Petitioner points out that the Fifth Respondent had encroached Survey No.727/1, which is classified as Government Poramboke and had put up a construction by obstructing the pathway. In reality, the same was objected to and the Petitioner made a representation before the First Respondent on 14.06.2017. Moreover, the Fourth Respondent had encroached Survey No.727/1 and is making an endeavour to proceed with the construction, which made the Petitioner to make a representation before Respondent Nos.1 to 3.

6. The grievance of the Petitioner is that as there is no pathway to the Navithar Community people, again, the Petitioner made a representation on 06.07.2017 and submitted a petition on 21.08.2017 on the 'Grievance Day' before the First Respondent. But, Respondent Nos.1 to 3 have not taken any action against Respondent Nos.4 and 5 in regard to the removal of encroachment, which has resulted in filing of the present Writ Petition by the Petitioner.

7. In response, it is the submission of the Learned Additional Government Pleader for the Third Respondent/Tahsildar, Kadavur Taluk, Karur District that as per the Revenue Records, Survey No.727/1 is mentioned as Natham in Old Survey No.493. In the year 1995, during UDR re-settlement, the land was re-classified as 'Thar Road'. Moreover, as on date, it is found as 'Thar Road'. The re-settlement was not challenged. As a matter of fact, Respondent Nos. 4 and 5 had encroached some part of Survey No.727/1.



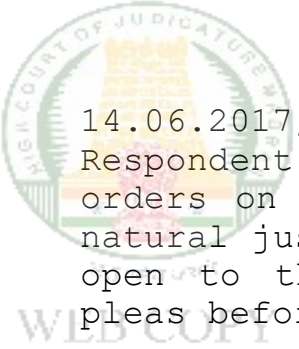
8. It is represented on behalf of Respondent Nos.1 to 3 that the Third Respondent will issue notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, against the encroachers and after obtaining explanation from them, they will proceed in accordance with Law, to remove the encroachment in Survey No.727/1 as afore stated.

9. The Learned Counsel for R-4 and R-5 contends that the Writ Petitioner has wrongly projected as if he belongs to Navithar Community and further as if Respondent Nos. 4 and 5 are encroachers. In fact, Respondent Nos.4 and 5, who are brothers also belong to Navithar Community and they are not encroachers. As a matter of fact, they do have clear title and other Revenue Records in their name to substantiate that they are title holders and not encroachers as incorrectly projected by the Petitioner in the instant Writ Petition.

10. The Learned Counsel for R-4 and R-5 proceeds to point out that admittedly, they are title holders of Survey No.727/9 and 727/10 and 727/1 is not a 'Sarkar Poramboke' and it is also a patta land stands in the name of one Pichaiyammal, W/o.Muthan, who is none other than the mother of Respondent Nos.4 and 5. Finally, it is the plea of Respondent Nos.4 and 5 that as per Revenue Records, by means of proceedings dated 16.10.2017(vide Ma.Va/211/2017) on the file of the Third Respondent, Survey No.727/1 stands in the name of Pichaiyammal, W/o.Muthan, who is none other than the mother of Respondent Nos.4 and 5.

11. Since the patta was issued in Survey No.727/1 as per the afore stated proceedings dated 16.10.2017, there is no question of encroachment and in fact, the Petitioner has filed the present Writ Petition with an ulterior motive under the caption 'PIL'. It is only a private enmity between the parties and in the instant Writ Petition, there is no element of 'Public Interest'. As such, the present Writ Petition is to be dismissed in the interest of justice.

12. Considering the stand taken on behalf of Respondent Nos.4 and 5 that they are the title holders in respect of Survey No.727/9 and 727/10 and in fact, Survey No.727/1 is not a 'Sarkar Poramboke' and it is a patta land stands in the name of Pichaiyammal, W/o.Muthan, who is none other than the mother of Respondent Nos.4 and 5 and also this Court taking note of the divergent stand taken by the respective parties, at this stage, without going into the merits of the matter, simpliciter, directs the First Respondent to look into the representations of the Petitioners dated 14.06.2017, 06.07.2017 and 21.08.2017, within a period of ten days from the date of receipt of a copy of this order. Thereafter, the First Respondent shall pass a reasoned speaking order on merits based on the aforesaid three representations submitted by the Petitioner beginning from



14.06.2017, after giving opportunity to the Petitioner and Respondent Nos.3, 4 and 5 and to take a final call by passing orders on merits, of course, after adhering to the principles of natural justice, within a period of four weeks thereafter. It is open to the respective parties to raise all legal and factual pleas before the First Respondent.

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

Sd/-

Assistant Registrar (Records)

/True copy/

Sub Assistant Registrar

To

1. The District Collector,
Karur District,
Karur.
2. The District Revenue Officer,
Karur District,
Karur.
3. The Tahsildar,
Kadavur Taluk,
Karur District.

+ 1 CC TO MR.P.Arun Jayatram, ADVOCATE IN SR No.84688
+ 1 CC TO MR.N.Mohideen Basha, ADVOCATE IN SR No.84581
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No.84363

pm

JS/MR KKR/SAR-2/09.11.2017/7C/4P

ORDER MADE IN
W.P. (MD) No.17002 of 2017
30.10.2017