



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on 17.07.2017

Pronounced on 26.07.2017

CORAM :

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.3830 of 2017

and

W.M.P. (MD) Nos.3030 and 10211 of 2017

and

Contempt Petition (MD) No.306 of 2017

W.P. (MD) No.3830 of 2017

S.V.Petha Perumal

... Petitioner

Vs.

- 1.State of Tamil Nadu
represented by its Secretary,
Revenue Department,
Fort St. George,
Chennai - 600 009.
- 2.The District Collector,
Sivagangai District,
Sivagangai.
- 3.The Revenue Divisional Officer,
Sivagangai District,
Sivagangai.
- 4.The Zonal Deputy Tahsildar,
Sivagangai.
- 5.The Tahsildar,
Devakottai Taluk,
Devakottai,
Sivagangai District.

... Respondents

Prayer in W.P. (MD) No.3830 of 2017: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned notice dated 20.02.2017 issued by the fifth respondent under Section 6 of Tamil Nadu Land Encroachment Act, 1905 with respect to the petitioner's building situated at a portion of Survey No.42/3, Kulakaal, Perattukkottai Group, Devakottai Taluk, Sivagangai District and quash the same.



For Respondents : Mr.M.Govindan, Spl. G.P.

Contempt Petition (MD) No.306 of 2017:

SV.AR.VR.Veerappan Chettiar

... Petitioner

WEB COPY

Vs.

1.ALB Job Varkis
The Revenue Divisional Officer,
Devakottai,
Sivagangai District.

2.B.Mangaleswari,
The Tahsildar,
Devakottai Taluk,
Sivagangai District.

... Respondents

Prayer in Cont.P.(MD) No.306 of 2017: Contempt Petition filed under Section 11 of Contempt of Courts Act, to punish the respondent herein for committing grave contempt and willful disobedience of the order passed by this Court in W.P.(MD) No.17734 of 2015 dated 01 October 2015.

Prayer in WP(MD) . 17734/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus direct the 1st respondent to consider the petitioners representation dated 02.04.2015 and direct to remove the encroachment in survey no. 42/3, 43 mattan kanmai channel at perattukottai group, devakottai taluk, sivagangai district.

For Petitioner : Mr.P.Muthusamy

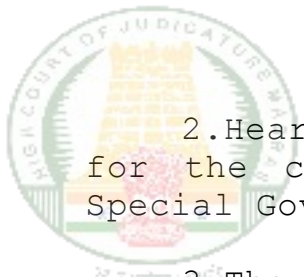
For Respondent : Mr.M.Govindan, Spl. G.P.

COMMON O R D E R

(Order of the Court was made by **G.R.SWAMINATHAN, J.**)

One SV.AR.Veerappan Chettiar filed W.P.(MD) No.17734 of 2015 for consideration of his representation dated 02 April 2015 for removal of encroachment in S.No.42/3, Mattan kanmai channel at Perattukottai group, Devakottai Taluk, Sivagangai District. This Court, by order dated 01 October 2015 directed the said SV.AR.Veerappan Chettiar to file a petition before the competent authority, who was directed to consider the same and pass appropriate orders. Pursuant thereto, the Tahsildar, Devakottai issued notice under Section 7 of the Land Encroachment Act, 1905 and that was followed by the impugned order dated 20 February 2017 issued under Section 6 of the Act. At this stage, the noticee has

<https://hcservices.accounts.gov.in/hcservices/>
filed W.P.(MD) No.3830 of 2017.



2. Heard Mrs.N.Krishnaveni, learned senior counsel appearing for the counsel for the writ petitioner and also the learned Special Government Pleader appearing for the respondents.

3. The learned senior counsel submitted that the writ petitioner is the Managing Director of M/s.Sree Kaderi Ambal Mills (P) Ltd., situated at S.No.43/5, 23/5 etc. spread over 40 acres at Perattukottai Group, Devakottai Taluk. Adjacent to the Mill premises in S.No.42/3, there is a Kulakkal poramboke. A rest room of the workers has been constructed extending over an area of 1746 sq.ft. According to the learned senior counsel, 'B' memo was issued on the writ petitioner and they were remitting the penal charges. They had approached the revenue authorities for leasing out the encroached portion in S.No.42/3.

4. The learned senior counsel contended that there is a provision for exchange of land under Revenue Standing Order No.26 A and referred to G.O.Ms.No.221 dated 21 April 2008 issued in favour of M/s.Text-Tools Limited, Coimbatore. We were taken through the representation dated 29 June 2015 submitted by the writ petitioner. The learned senior counsel submitted that if the offer of exchange proposed by the writ petitioner is accepted, the impugned order will have to be quashed. A persuasive submission was made to the effect that water course would be adequately taken care by deepening and construction of retention wall.

5. It is not in dispute that the writ petitioner had committed encroachment in S.No.42/3, Perattukkottai group, Devakottai Taluk. A rest room had been constructed on what is admittedly a government poramboke land. Though considerable emphasis was laid on R.S.O.No.26 A by the learned senior counsel appearing for the writ petitioner, we are of the view that the writ petitioner cannot demand as a matter of right that they must be allowed to continue to squat on the encroached land and that they would compensate the government by offering another land by way of exchange. Such a course of action would be impermissible in the instant case, because the encroached area is a Kulakkal poramboke. Water course cannot be allowed to be obliterated or interfered with. Any water course will have to be maintained as it is. The Hon'ble Supreme Court in more than one decision has mandated that if need be, appropriate measures will have to be taken for restoration of the water bodies as they originally existed. That being so, we are not in a position to accept the request made by the learned senior counsel appearing for the writ petitioner.

6. Mandamus can be issued for consideration of the representation of the petitioner, only if a legal right inheres in the applicant and a corresponding duty is cast on the authority. There is no such legal right on the part of the petitioner nor a duty on the part of the authority. On the other hand, there is a duty on the part of the authority to clear the

encroachment and restore the water course.

7.The fifth respondent has not issued the order under Section 6 of the Act straightaway. The proceedings under the Tamil Nadu Land Encroachment Act were taken pursuant to a direction of this Court issued in W.P.(MD) No.17734 of 2015. It is true that the writ petitioner herein was shown as fourth respondent and in the said writ petition, the order was passed without notice to the writ petitioner herein. Be that as it may, the fifth respondent has passed the impugned order dated 20 February 2017 only after issuing notice under Section 7 of the Act as early as on 13 April 2016. In fact, on account of the long gap between the notice under Section 7 of the Act and the order under Section 6 of the Act, contempt petition No.306 of 2017 came to be instituted. Admittedly, the writ petitioner is an encroacher. We see no merit in the writ petition. The writ petition stands dismissed. No costs.

8.Since the order under Section 6 of the Land Encroachment has been passed and its validity has been sustained in W.P.(MD) No.3830 of 2017, no further orders are necessary in the contempt petition. Accordingly, the contempt petition is closed. We expect the authorities to clear the encroachments as expeditiously as possible and in any event, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

- 1.The Secretary,
State of Tamil Nadu,
Revenue Department,
Fort St. George,
Chennai - 600 009.
- 2.The District Collector,
Sivagangai District,
Sivagangai.
- 3.The Revenue Divisional Officer,
Sivagangai District,
Sivagangai.
- 4.The Zonal Deputy Tahsildar,
Sivagangai.
- 5.The Tahsildar,
Devakottai Taluk,
Devakottai,
Sivagangai District.
- 6.The Revenue Divisional Officer,
Devakottai, Sivagangai District



+1cc to Mr.P.THIAGARAJAN Advocate in SR. No.68707

+1cc to THE SPECIAL GOVERNMENT PLEADER in SR. No.68624

ARUL/SKM

JS/GT/SAR.3/3.8.2017/5P-9C

order made in

W.P(MD)No.3830 of 2017

and

W.M.P. (MD) Nos.3030 and 10211 of 2017

and

Contempt Petition (MD) No.306 of 2017

26.07.2017

WEB COPY