



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) No.9026 of 2017
and
W.M.P. (MD) .No.6895 of 2017

S.Mallika .. Petitioner

Vs.

1.The Tahsildar,
Kadayanallur Taluk,
Kadayanallur, Tirunelveli District.

2.The Taluk Surveyor,
Kadayanallur Taluk Office,
Kadayanallur, Tirunelveli District.

3.The Block Development Officer,
[Village Panchayat],
Kasitharmam, Kadayanallur Taluk,
Tirunelveli District.

4.S.R.Ayyadurai .. Respondents

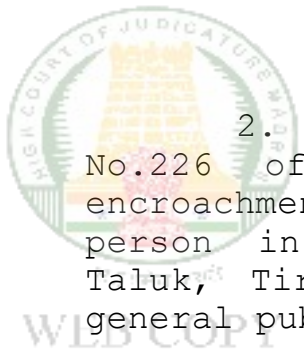
PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records relating to the impugned order of the third respondent in Na.Ka.No.A3/783/2016, dated 31.03.2017 and the consequential order in Na.Ka.No.A3/783/2016, dated 03.05.2017 and quash the same.

For petitioner	: Mr.H.Arumugam
For respondents 1 to3	: Mr.M.Govindan Special Government Pleader
For Respondent No.4	: Mr.G.Karnan

O R D E R

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

The Writ Petitioner challenges the order dated 31.03.2017 and also the consequential order dated 03.05.2017, issued by the ~~third respondent~~ herein.

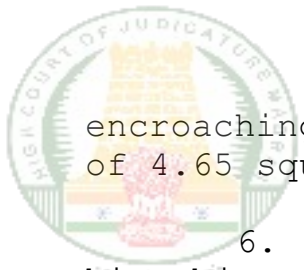


2. Earlier, the fourth respondent herein filed W.P.(MD). No.226 of 2017, seeking a direction for removal of the encroachment made by the writ petitioner herein and one other person in Survey No.303/4, Kasitharmam Village, Kadayanallur Taluk, Tirunelveli District, which is used as a road by the general public.

3. This Court took note of the fact that Survey No.303/4 in Kasitharman Village, Kadayanallur Taluk, Tirunelveli District, has been classified as "road" and directed the authorities to remove the encroachment said to have been made by the writ petitioner herein and one S.P.Anaikutti Pandian, after following the due process of law within a period of two months. But, the Executive Officer of the Local Panchayat, without following the due process of law, issued notice dated 06.02.2017, calling upon the writ petitioner to remove the encroachment in question. This was challenged by the Writ Petitioner by filing W.P.(MD).No.3235 of 2017 and the said impugned notice was quashed by this Court on 06.03.2017 and this Court directed the authorities to conduct proper survey with reference to revenue records and if any encroachment was found on the road, the same was directed to be removed under due process of law.

4. Pursuant to the order dated 06.03.2017 in W.P.(MD). No.3235 of 2017, the third respondent herein issued the impugned order dated 31.03.2017. The writ petitioner submitted a representation dated 04.04.2017 to the third respondent herein. By the impugned communication dated 03.05.2017, the third respondent informed the writ petitioner that due survey was undertaken and upon measurement, encroachment to an extent of 0.25 meters was noticed. It was further mentioned therein that if the writ petitioner failed to remove the encroachment on her own, action would be taken under Section 131(2) of the Tamil Nadu Panchayats Act, 1994. Both these orders have been challenged in the present Writ Petition.

5. During the pendency of the Writ Petition, an Advocate Commissioner was appointed. This Court, by order dated 17.05.2017, directed the said Advocate Commissioner to visit the road situated in Survey No.303/4 and also the writ petitioner's property in Survey No.303/5, situated in Plot No.81, M.G.R. Nagar, Amman Kovil Street at Kasitharman Village, Kadayanallur Taluk, Tirunelveli District and measure the same with the help of the Town Surveyor and submit a report. Subsequently, the said order was modified and the Advocate Commissioner was directed to take the assistance of the District Surveyor to inspect and measure the property in question. Accordingly, the Advocate Commissioner conducted inspection, surveyed the land, measured the property in question and submitted a report with a sketch and plan. It is seen from the report of the Advocate Commissioner, dated 31.07.2017 that the petitioner's house has been constructed by



encroaching upon a road portion in Survey No.303/4, to an extent of 4.65 square feet.

6. The learned counsel for the writ petitioner has filed his objections to the said report of the Advocate Commissioner.

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7. We heard the learned counsel for the parties and perused the materials available on record.

8. The third respondent issued the impugned orders only based on the survey report. The writ petitioner was not satisfied with the same and that is why, this Court appointed an Advocate Commissioner to conduct a fresh survey. In fact, the survey was done with the help of the District Surveyor. The report of the Advocate Commissioner clearly indicates that the writ petitioner had put up her house by encroaching upon the public road. Section 131(2) of the Tamil Nadu Panchayats Act, 1994 prohibits encroachment on public roads. If encroachment is noticed, it is the duty of the local authority to remove the same, of course, after following the due process of law.

9. In the present case, the writ petitioner was fully involved in the entire process of land survey and measurement. Now that the commission of encroachment in Survey No.303/4 has been established, it is the duty of the third respondent to proceed further in terms of Section 131(2) of the Tamil Nadu Panchayats Act, 1994 and cause removal of such encroachment. We find no ground to interfere with the order passed by the third respondent. Hence this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar

To:

1.The Tahsildar,
Kadayanallur Taluk,
Kadayanallur, Tirunelveli District.

2.The Taluk Surveyor,
Kadayanallur Taluk Office,
Kadayanallur, Tirunelveli District.



3.The Block Development Officer,
[Village Panchayat],
Kasitharmam, Kadayanallur Taluk,
Tirunelveli District.

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+1cc to M/S.H.Arumugam, Advocate SR.No. 71418
+1cc to M/S.G.Karnan, Advocate SR.No. 71156

ORDER MADE IN
W.P. (MD) No.9026 of 2017
08.08.2017

nb
JM/MR KKR/SAR 1/28.08.2017/4P/6C