



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.11.2017

CORAM:

WEB COPY

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

W.P. (MD) No.13499 of 2013

V.Guruvareddy

: Petitioner

. vs .1. The District Collector,
Madurai.2. The Tahsildar,
Vadipatti Taluk,
Madurai.3. Vadipatti Town Panchayat,
represented by its Executive Officer,
Vadipatti, Madurai.

4. Radhabai @ Padmavathi

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying this Court for issuance of a Writ of Certiorarified Mandamus calling for the records of the first respondent in Na.Ka.No.36125/2011/J3, dated 17.6.2013 and to quash the same and to direct the respondents 1 to 3 to remove the encroachment made by the fourth respondent in S.Nos.109/8 and 274/10 of Thathampatti Village, Vadipatti Taluk, Madurai District.

For Petitioner

: Mr.P.Vinoth
for M/s.R.SubramanianFor Respondents
1 and 2: Mr.M.Govindan
Special Govt.Pleader

For Respondent-3

: No appearance

For Respondent-4

: Mr.T.Selvan
for M/s.B.K.Rajendran

**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 Certiorarified Mandamus calling for the records of the first respondent in Na.Ka.No.36125/2011/J3, dated 17.6.2013 and to quash the same and to direct the respondents 1 to 3 to remove the encroachment made by the fourth respondent in S.Nos.109/8 and 274/10 of Thathampatti Village, Vadipatti Taluk, Madurai District.

2.Heard both sides.

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

4.According to the Petitioner, he is residing at No.3/4/11/1, Naicker New Street, Thathampatti, vadipatti Taluk, Madurai. His house is situated in S.No.109/3 of Thathampatti Village. As a matter of fact, the Fourth Respondent is residing in the same street. She had constructed many houses in the same area and leased out the same. She had also encroached the above land and put up construction.

5.The stand of the Petitioner is that he had sent representations to the Respondents 1 and 2 and other authorities on 5.9.2011 to remove the encroachment to enable the residence to use the lane. In reality, by means of proceedings, dated 19.08.2009, the Second Respondent had directed the Third Respondent to remove the encroachment. Later, by means of proceedings, dated 12.7.2010, the Third Respondent had directed the Fourth Respondent to remove the encroachment made in S.Nos.109/8 and 274/10.

6.At this stage, the Learned Counsel for the Petitioner contends that since there was no progression in the subject-matter in issue, the Petitioner addressed a representation to the Respondents 1 and 2 and other authorities. Later, he filed a Writ Petition in W.P.No.4647 of 2011 seeking necessary directions to be issued to the Respondents to remove the encroachment made by the Fourth Respondent in S.Nos.109/8 and 274/10 of Thathampatti Village. By virtue of order, dated 25.4.2011, this Court was pleased to direct the First Respondent/The District Collector, Madurai to consider the Petitioner's representation, dated 23.11.2010 and pass orders in accordance with Law after providing reasonable opportunity to all the parties concerned.

7.The version of the Petitioner is that by means of a memo, dated 4.8.2011, the First Respondent/The District Collector, Madurai had directed the Petitioner to appear for an enquiry on 17.8.2011 together with documents. He appeared before the Respondent and took part in the enquiry and later, the Third Respondent issued a memo,



dated 29.8.2011 directing the Fourth Respondent to remove the encroachments within 15 days. Further, no action was taken by the Executive Officer.,

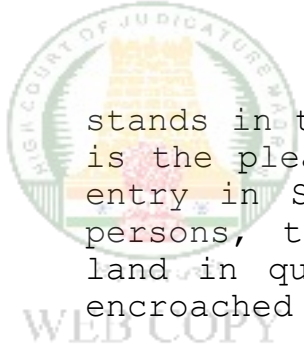
8.It appears that the Petitioner by means of letter, dated 15.09.2011 had requested the First Respondent to comply with the order passed by this Court. Since the order of this Court was not complied with, the Petitioner projected a Contempt Petition in Cont.P(MD)No.149 of 2012. On 17.6.2016, this Court was pleased to direct the Government Pleader to get instruction regarding the compliance of the order passed by this Court. On 18.6.2013, when the matter was taken up for hearing, an order dated 17.6.2013 passed by the First Respondent was served and the Contempt Petition was closed. In the order, dated 17.6.2013, the First Respondent had stated that the land in S.Nos.109/8 and 274/10 are patta lands and hence, no action can be taken for removing the encroachments.

9.The prime grievance of the Petitioner is that the Respondents in their earlier communications had categorically admitted the existence of street and directed the Fourth Respondent to remove the same etc. But only with a view to close the Contempt Petition, the First Respondent had hurriedly passed the order in question. Therefore, the same is challenged in the present Writ Petition.

10.Conversely, it is the submission of the learned Special Government Pleader appearing for the Respondents 1 and 2 that pursuant to the order passed by this Court in W.P.(MD)No.4647 of 2011, dated 15.4.2011, the First Respondent/The District Collector, Madurai had called for a report from the Second Respondent and in turn, the Second Respondent's Office submitted a representation dated 15.6.2013 to the First Respondent. According to it, S.No.109/8 measuring an extent of 0.00.33 sq meter is classified as 'Ryotwari Punja Land' and do stands in the name of one Kandasamy, Kanagaraaj and Manjula as per Village Account.

11.The Learned Special Government Pleader appearing for the Respondents 1 and 2 submitted that in UDR Scheme, the aforesaid lands stand in the name of Samiappa Chettiar and four others bearing Patta No.614. In respect of land in S.No.274/10, measuring an extent of 0.00.43 sq.meter is classified as 'Natham Royotwari Punja Land' and do stand in the name of one Selvarasu, Sekar, Santha, Thirumalaiappan and Ponperumal, as per revenue records and under UDR Scheme, it was recorded in the name of one Sakthivel Chettiar and three others in S.No.105/5(corresponding old S.No.274/10, bearing Patta No.604).

12.The version of the Respondents 1 and 2 is that the Petitioner and that the Fourth Respondent was provided with a personal opportunity to project their case, but the Petitioner had not established that the land in S.Nos.109/8 and 274/10 were used as public pathway. On the other hand, it is represented on behalf of the Respondents 1 and 2 that the revenue records shows that it



stands in the name of private person 'pattadhars' and moreover, it is the plea of the Respondents 1 and 2 that taking advantage of an entry in S.No.109/8 as pathway together with the name of private persons, the Petitioner endeavoured to project his case and that land in question was a public pathway and Fourth Respondent had encroached upon it.

13.The Learned Special Government Pleader appearing for the Respondents 1 and 2 brings it to the notice of this Court that the entry as pathway in the revenue records shows that the pattadhars used the particular land as pathway for their own and in short, the Petitioner cannot lay a claim or have any right over the private pathway and also, even the official respondents cannot compel the private parties to direct the Petitioner to use the said land.

14.The core stand on behalf of the Respondents 1 and 2 is that since the land in the subject-matter in issue do stand in the name of private persons, the occupation of the Fourth Respondent cannot be treated as an encroachment and no action can be taken by the official respondents against the Fourth Respondent.Under these circumstances, the First Respondent had issued the impugned order, dated 17.6.2013.

15.While winding up, the Learned Special Government Pleader appearing for the Respondents 1 and 2 contends that the First Respondent/The District Collector, Madurai had passed the impugned order, dated 17.6.2013 after considering of the revenue records and scrupulously following the direction issued by this Court and after hearing the parties concerned. In effect, it is clear-cut stand of the Respondents 1 and 2 that the Petitioner has not made out a ex-facie case for the invocation of Article 226 of the Constitution of India.

16.The Learned Counsel for the Fourth Respondent submits that the Fourth Respondent has not made any encroachments in the concerned survey numbers.

17.It is to be borne-in-mind that invocation of Article 226 of the Constitution of India, although an extraordinary remedy, yet it is a discretionary one, in the considered opinion of this Court. Apart from that, an extraordinary and an inexpensive remedy envisaged under Article 226 of the Constitution of India cannot be pressed into service where factual and other complex issues are involved. No doubt, restraint of application of Article 226 of the Constitution of India is prescribed by the Courts after exercising their self-restraint.

18.Be that as it may, insofar as the present case is concerned, the First Respondent/The District Collector, Madurai had issued the impugned proceedings, dated 17.6.2013 after evaluating the pros and cons of the subject-matter in issue and consequently came to the conclusion that the lands in S.Nos.109/8 and 274/10 at Thathampatti



Village are patta lands and as such, it could not be removed as encroachments in terms of the ingredients of the Tamil Nadu Land Encroachment Act, 1905. In this connection, this Court on going through the contents of the impugned order, dated 17.6.2013 of the First Respondent, without any hesitation holds that the said order is free from any flaw.

19. Viewed in that perspective, the Writ Petition sans merits. In fine, the Writ Petition stands dismissed, leaving the parties to bear their own costs.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
Madurai.
2. The Tahsildar,
Vadipatti Taluk,
Madurai.
3. The Executive Officer,
Vadipatti Town Panchayat,
Vadipatti, Madurai.

+ 1 CC TO Mr. R. SUBRAMANIAN, ADVOCATE IN SR No. 84990

VSN

TE/JC/SAR-I : 13/11/2017 : 5P/5C

ORDER MADE IN
W.P. (MD) No. 13499 Of 2013
02.11.2017