

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.30187 of 2017
and
W.M.P.Nos.32811 of 2017 and 1837 of 2018

S.P.Rajamani ... Petitioner

Vs.

1. State of Tamil Nadu,
Rep. by its Principal Secretary
to Government,
Revenue Department,
Fort St.George, Chennai-600 009.

2. The District Collector,
Erode District, Erode.

3. The Tahsildar, Anthiyur Taluk,
Anthiyur, Erode District.

4. R.Babu Reddy ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to forbear the respondents 2 and 3 and their subordinates from interfering into petitioner's peaceful possession, demolishing and enjoyment of property (residential house) in Survey No.159/1, an extent of 2 cents, situated at Vellitrippur Village, Anthiyur Taluk, Erode District or in the alternative, direct the respondents 1 to 3 to issue house site patta to the petitioner under the special scheme of the first respondent within stipulated time if it is encroached.

For petitioner : Mr.M.R.Jothimanian

For respondents: Mr.R.Udayakumar, Addl.G.P. for RR-1 to 3
Mr.D.Thirumoorthy for Ms.S.P.Arthy for R-4

ORDER

(The Order of the Court was made by M.Venugopal, J)

The petitioner has come forward with this Writ Petition praying for issuance of a Writ of Mandamus to forbear the respondents 2 and 3 and their subordinates from interfering into petitioner's peaceful possession, demolition and enjoyment of property (residential house) in Survey No.159/1, an extent of 2 cents, situated at Vellitrippur Village, Anthiyur Taluk, Erode District or in the alternative, direct the respondents 1 to 3 to issue house site patta to the petitioner under the special scheme of the first respondent within stipulated time if it is encroached.

2. According to the petitioner, he hails from a poor agricultural family and possessing agricultural land in Survey No.158 of Vellithirupur Village, Reddypalayam Post, Anthiyur Taluk, Erode District and the same was acquired by him by means of registered partition deed, dated 15.07.2012 (vide document No.958 of 2002). It is the stand of the petitioner that from the date of partition of the said property, he and his family members are residing there and enjoying the property. Furthermore, he is cultivating his land for his family's livelihood and has constructed a small house in S.No.158 of the said village. However, he was informed by the Revenue Officials that 2 cents of land (residential house) is in S.No.159 of the said village, which is adjoining the petitioner's house and S.No.159 is classified as 'Vandi Pathai' (cart track). The plea of the petitioner is that he had constructed his house in his patta land and he had not made any encroachment as averred by the respondents in S.No.159. Because of the neighbouring land dispute between the petitioner and the fourth respondent, the fourth respondent had lodged a complaint as if the petitioner had encroached the cart-track and put up construction of a residential house. In fact, the claim of the fourth respondent is an incorrect one and against the rights of the petitioner to reside in his patta land. The petitioner has obtained electricity connection and also has documents to show that from the year 1993, he is residing there and that 20 feet of the cart-track is available to the use of the fourth respondent and others and the remaining area is covered by big rock on the other side, which is 5 metres. As such, the claim of the fourth respondent is an illegal one and against the petitioner's occupation of the property in question.

3. While that be the fact situation, on 01.03.2017, the version of the petitioner is that the third respondent/Tahsildar had passed an order to remove the encroachment made by the petitioner in S.No.159/1 of Vellitirupur Village. Pursuant to the said order of the third respondent, dated 01.03.2017, the

petitioner submitted his explanation before the second respondent/District Collector and the third respondent/Tahsildar and the same was not considered by them. Hence, the petitioner filed a civil suit in O.S.No.137 of 2017 before the District Munsif Court, Bhavani, against the respondents 2 to 4 herein. The trial Court in I.A.No.498 of 2017 in O.S.No.137 of 2017 granted an order of interim injunction on 03.10.2017 and the main suit is pending as on date. Besides the above, the learned counsel for the petitioner submits that on 16.11.2017, the third respondent and the Revenue Officials came to the petitioner's house and informed that they are going to demolish his residential house, as it is encroached by the petitioner and the residential house in S.No.159/1 of the said village was put up by him and that the demolition of the petitioner's house will be done as per the order passed by this Court in W.P.No.21888 of 2017, dated 17.08.2017, which is filed by the fourth respondent herein as writ petitioner therein. In fact, in the aforesaid Writ Petition, a demolition order was passed by this Court and a direction was issued to the third respondent to conduct enquiry after de-notice being issued to the petitioner.

4. The main grievance of the petitioner is that no notice was issued to him and no enquiry was conducted by the third respondent/Tahsildar, and therefore, the action of the third respondent is against his claim before the civil Court. It cannot be gainsaid that the fourth respondent is the third defendant in the said suit, in which interim injunction was granted against the respondents 2 to 4 herein. In this connection, the petitioner herein comes out with a stand that interim order of injunction passed by the trial Court in the said suit is in force as on date, which fact has been suppressed by the fourth respondent as if the petitioner has encroached the cart-track by putting up the construction.

5. Advancing his arguments, learned counsel for the petitioner submits that 2 cents of cart-track is very much available for the fourth respondent and others and also the remaining 5 metres of big rock on the other side is also available. As such, no encroachment is made by the petitioner as alleged by the fourth respondent. In short, according to the learned counsel for the petitioner, the fourth respondent is misleading the Court and in reality, the respondents 2 to 4 should have disclosed the factum of filing of the said suit which is pending before the trial Court, and therefore, the petitioner's rights should be protected from the illegal action of the respondents 2 and 3.

6. Therefore, the petitioner has filed the present Writ Petition seeking to restrain the respondents 2 and 3 from interfering with the petitioner's peaceful possessing and

demolition and enjoyment of his residential house in S.No.159/1 measuring an extent of 2 cents situated in the said village, or in the alternative, for passing an order by this Court directing the respondents 1 to 3 to issue house site patta to and in his favour under the special scheme of the first respondent within the stipulated time, if it is encroached.

7. The third respondent has filed counter affidavit . No counter affidavit is filed by the respondents 1, 2 and 4.

8. Per contra, learned Additional Government Pleader appearing for the respondents 1 to 3, by filing counter affidavit of the third respondent, submitted that before filing the present Writ Petition by the petitioner, the fourth respondent gave a notice, dated 07.01.2017 through his counsel to evict the encroachment in the cart track in S.No.159/1 by addressing the same to the second respondent/District Collector, Erode, with copies being marked to the Revenue Divisional Officer, Gobichettipalayam and third respondent/Tahsildar, Anthiyur. In fact, the second respondent/District Collector forwarded the said notice and instructed the third respondent/Tahsildar to take necessary action in accordance with the instructions laid down in G.O.Ms.No.540, Revenue (LD6(2)) Department, dated 04.12.2014. At this juncture, learned Additional Government Pleader appearing for the respondents 1 to 3 contended that on a perusal of the village accounts, the land in question bearing R.S.No.159/1, measuring 0.17.0 hectares, is registered as patta in the name of R.Ganapathy Gounder and the President of Panchayat Vellithiruppur with 'Nilaviyal Vandi Pathai' (cart track). Really speaking, in the said 'Nilaviyal Vandi Pathai' (cart track), according to the learned Additional Government Pleader appearing for the respondents 1 to 3, no one has got any exclusive right on the portion of the plan marked channel or pathway or cart track running in the patta land, because of the fact that these are Government lands. In this connection, the learned Additional Government Pleader referred to Order No.26 of the Revenue Standing Orders, particularly, 26.15 therein, in which, it is clearly mentioned as under:

RSO.26.15. Encroachments on plan marked details:
A plan marked channel or pathway running in a patta land is a Government land. Eviction of encroachments in such lands need be invoked only in cases where the encroacher has interfered with the plan marked detail so as to close its entrance to an exit from his lands. In the case of pathways and cart tracks which have been used by the general public till recently, the ryot should not be allowed to shift the course of the details to suit his own convenience. However, such diversions of plan marked channel from its original

course, with a view to consolidate his holding or to facilitate irrigation of the portions which would be otherwise severed need not be treated as a encroachment."

9. Furthermore, in reply to the application dated 24.04.2013 of one Mr.M.Sivasubramaniam of Chithode of Erode District, under the Right to Information Act, the Assistant Commissioner of Land Administration Department-III, Chennai, has given reply dated 14.05.2013 stating that the information sought for about encroachment in 'Nilaviyal Pathai' is given therein and as per the Revenue Standing Order No.15, the demarcation of the Nilaviyal Pathai even running in the patta land, is owned to the Government and the Tahsildar is empowered to vacate the encroachment found in the Nilaviyal Pathai. Added further, another application dated 30.06.2014 of one Thiru.E.Krishnan of Ayappakkam of Chennai, under the Right to Information Act, the Assistant Commissioner of Land Administration Department-III, Chennai, replied in his letter dated 18.07.2014 stating that Nilaviyal Cart Track is a cart track running through patta land, but it is a Government land and the public has the right of way to pass through this Nilaviyal Cart Track and the pattadar has no right to close his cart track rendering it impossible to the public.

10. The core contention advanced on behalf of the respondents 1 to 3 is that since the dispute-land is 'Nilaviyal Cart Track' owned by the Government left for general public use, the officials concerned interfered to remove the encroachments in the 'Nilaviyal Cart Track' based on the petitions received from the fourth respondent-Babu Reddy. Based on his application, a report has been called for from the Zonal Deputy Tahsildar and the Revenue Inspector, Ammapettai and from the reports received from the subordinates of the third respondent-Tahsildar, Anthiyur, it came to light that the building was constructed by one Mr.Rajamani on the 'Nilaviyal Vandi Pathai' (cart track) and the building was rented out to the purchase point of a private milk society to purchase the milk from the farmers residing in the surroundings and for this building, the encroacher has paid house tax before the Village Panchayat concerned and also obtained service connection from the Tamil Nadu Electricity Board.

11. Learned Additional Government Pleader appearing for the respondents 1 to 3 while drawing the attention of this Court to the counter affidavit filed by the third respondent-Tahsildar, submitted that since the second respondent-District Collector, Erode has instructed the third respondent-Tahsildar to take action in accordance with the instructions prescribed in G.O.Ms.No.540, Revenue (LD6(2)) Department, dated 04.12.2014 and

also on the reports of the subordinates, and it was desired to conduct enquiry with liberty to the petitioner and the encroacher to offer their claim and in this regard, a notice dated 16.02.2017 was issued by the third respondent-Tahsildar and served on them. In fact, the writ petitioner, the encroacher, the Revenue Inspector and the Village Administrative Officer were present on the date of enquiry held on 21.02.2017. During the course of enquiry, statements were obtained from the writ petitioner as well as the fourth respondent and the fourth respondent-Babu Reddy in his statement, has stated that the land bearing R.S.No.160 is owned by him hereditarily and enjoyed by him and trespassed through the Nilaviyal cart track running in the land R.S.No.159/1 and now the said person has occupied the portion of the land by constructing a house and hence, he is not able to use the vehicles and to access his patta land and prayed for removing the encroachment. However, in the statement furnished by the encroacher, he has stated that he has encroached a portion of the land in Nilaviyal cart track and constructed a house and residing there and further, he had agreed to remove the encroachment for making a pathway to the petitioner within two days and if he has not removed the encroachment by the time, he will abide by the action taken by the Government.

12. The Version of the respondents 1 to 3 is that the writ petitioner (encroacher) had not turned up to vacate his occupation in the 'Nilaviyal Cart Track' in time and as such, the third respondent-Tahsildar, by proceedings dated 01.03.2017, ordered the Zonal Deputy Tahsildar, Revenue Inspector, Firka Surveyor and the Village Administrative Officer to evict the encroachment in the 'Nilaviyal Cart Track' and a copy of the proceedings was marked to the writ petitioner and the encroacher. Pursuant to the proceedings of the third respondent-Tahsildar, the Revenue Inspector prepared a notice dated 14.03.2017 as per Section 7 of the Tamil Nadu Land Encroachment Act to the encroacher, but the same was not served on the encroacher because of the suit filed by the encroacher before the Sub-Court, Bhavani.

13. It is the further contention of the learned Addl.G.P. appearing for the respondents 1 to 3 that when the eviction proceedings are in force, the petitioner-encroacher has filed a suit in O.S.No.137 of 2017 before the said Sub-Court and prayed for interim injunction in I.A.No.498 of 2017 to claim right over the land in question and also to prevent the trespass by the respondents 2 to 4 in the present Writ Petition. The said suit is pending as on date.

14. Learned Addl.G.P. appearing for the respondents 1 to 3 further pointed out that in the said pending suit is O.S.No.137 of 2017 and I.A.No.498 of 2017 filed by the writ petitioner/encroacher, the trial Court, on 03.10.2017, granted temporary injunction till the disposal of the suit and based on the same, the official respondents have not taken any action in regard to the removal of encroachment.

15. It is further submitted on the side of respondents 1 to 3 that the fourth respondent-Babu Reddy filed W.P.No.21888 of 2017 before this Court impleading the official respondents herein as parties therein, apart from the present Writ Petitioner, praying to remove the encroachment in the dispute-land, which was disposed of by this Court on 17.08.2017 directing the third respondent-Tahsildar to put the respondent 4 therein, who is the writ petitioner herein and the fifth respondent therein, namely Subramani and the fourth respondent herein, who is the writ petitioner therein, on notice and to carry out the inspection of the site/land in question and thereafter take action in accordance with law within a period of eight weeks from the date of receipt of the order and to communicate the decision taken to the petitioner therein as well as to the respondents 4 and 5 therein. Even before the said order of this Court, the action was already initiated to remove the encroachment based on the representation dated 07.01.2017 of the fourth respondent-Babu Reddy and the action was pending to remove the encroachment.

16. Moreover, it is the stand of the third respondent-Tahsildar in the counter affidavit that the writ petitioner-Rajamani filed the present writ petition for the relief stated supra and on 22.12.2017, this Court observed that despite the civil Court's interim order of injunction, restraining the respondents 2 and 3 and their subordinates from interfering with the peaceful possession of the property, the possession of the writ petitioner is likely to be disturbed, and thereby, this Court granted an order of interim stay till 20.12.2017, making it clear that till the disposal of the present writ petition, the writ petitioner herein shall not create any third party right in respect of the land in question and shall not alter the physical features also. Obeying this order, the encroacher has not been disturbed from his encroachment portion till now.

17. The primordial contention projected on the side of the respondents 1 to 3 is that the suit field, classified as 'Nilaviyal Vandi Pathat' (cart track) running in the patta land, is Government Poramboke and the same is absolutely owned by the Government and left for the public use and no private person has right to register the Government Poramboke land to claim right and if it is done, the registration is false and against law.

18. It is to be remembered that the writ petitioner in his affidavit in paragraph 2, has candidly admitted that he is owning a house in the adjacent filed No.158 and additionally captured the cart track for extending his residence. In fact, the report from the subordinates reveals that the writ petitioner has constructed the house building and lent it to a private milk society for the purchase point for milk which is commercial purpose and the same is unlawful encroachment of the Government Poramboke, that too in the 'Nilaviya Vandi Pathai' (cart track).

19. Further, since the fourth respondent-Babu Reddy has given a complaint to the second respondent/District Collector, the Collector had procedurally forwarded the said complaint/petition to the third respondent-Tahsildar, instructing him to take necessary action as per G.O.Ms.No.540, Revenue (LD-6(2)) Department, dated 04.12.2014. Moreover, the writ petitioner was provided with an opportunity of being heard, he being an encroacher, and the complainant, namely the fourth respondent-Babu Reddy was also provided with an adequate opportunity of being heard and the respective parties were enquired by the third respondent-Tahsildar on 21.02.2017, and in the enquiry, the writ petitioner/encroacher agreed to vacate the encroachment within two days, otherwise, to bear the action taken by the Government. Subsequently, the writ petitioner did not turn up and hence, the third respondent has passed orders on 01.03.2017. Further, in obedience to the order dated 03.10.2017 passed by the trial Court in the said suit, the writ petitioner was not disturbed from his illegal possession on the Government Poramboke. The above action of the writ petitioner in not keeping up his words, is undoubtedly not a favourable circumstance to and in favour of the writ petitioner in the considered opinion of this Court.

20. It is further stated by the learned Addl.G.P. appearing for the respondents 1 to 3 that in regard to the interim order passed by the trial Court in the said suit, the crystalline stand of the respondents 1 to 3 is that the writ petitioner is not disturbed from his illegal possession on the Government Poramboke.

21. At the risk of repetition, this Court unhesitatingly points out that the Nilaviyal Vandi Pathai (cart track) running through the patta land is owned by the Government and when the third respondent-Tahsildar had come out with a clear-cut case that the said cart tack is left for usage of the general public, then, by no stretch of imagination, the petitioner can claim any exclusive right over the said cart track.

22. Furthermore, the representation dated 23.03.2017 of the writ petitioner before the second respondent-District Collector, was forwarded to the third respondent-Tahsildar, which is not reliable before the orders in RSO.26(15) and also the orders in G.O.Ms.No.540, Revenue (LD.6(2)) Department, dated 04.12.2014. The encroachment in the Government Poramboke is earmarked in the FMB as Details as "Nilaviyal Vandi Pathai", and hence the occupation of the writ petitioner is illegal and he will have to be evicted forthwith on the complaint, but due to pending disposal of the suit before the trial Court, the action is pending for eviction.

23. The contention of the learned counsel for the petitioner is that the respondents 1 to 3 will have to follow the provisions contained in the Tamil Nadu Land Encroachment Act and that notice under Section 7 of the said Act has got to be issued and thereafter, orders can be passed under Section 6 of the said Act on the basis of the explanation that may be, if submitted by the writ petitioner to the said notice under Section 7.

24. In this connection, it is to be noted that the provisions contained in the Tamil Nadu Land Encroachment Act are only the procedures for removing the encroachment from the place where it is and in this case, the factum of offering 2 cents for the encroachment made in S.No.159/1 or the relevant site, is only a mere offer and the petitioner is also willing to pay compensation for the said 2 cents to the Government or in the alternative, he seeks for patta for the said 2 cents and that a detailed enquiry has been contemplated under G.O.Ms.No.540, discussed supra, and invoke the provisions of the said Tamil Nadu Land Encroachment Act, all of which are only to prolong the issue of removal of the encroachment in question.

25. In the above context, it is to be noted that admittedly, the petitioner is not the owner of the land in S.No.159/1 and that he has offered another two cents of the land. This Court is not inclined to accept the same because of the reason that the said offer cannot be a reasonable, genuine and valuable substitute for the land being the said 'Nilaviyal Vandi Pathai' (cart track) and the entire issue on hand will be given a quietus, and there will be nothing to adjudicate in the civil matter.

26. It is to be further noted that the writ petitioner cannot ride two horses at a time and he approached civil Court by filing suit and obtained interim order of injunction before the trial Court, and thereafter, he has also approached this Court by way of filing the present Writ Petition for almost similar relief.

27. For the foregoing submissions and discussion made thereunder, this Court holds that the writ petitioner is not entitled to seek the relief sought for by him in this Writ Petition. The third respondent-Tahsildar is directed to take necessary steps effectively, efficaciously, diligently and Godspeed to remove the encroachment made by the writ petitioner in the 'Nilaviyal Vandi Pathai' (cart track) and restore the same to its original position, so that the general public will use the said cart track to the optimum extent. The said action has to be taken by the third respondent-Tahsildar by removing the encroachment in question by the writ petitioner, within a period of four weeks from the date of receipt of a copy of this order.

28. With the above observations and directions, the Writ Petition is disposed of. No costs. Consequently, W.M.Ps. are closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary to Government,
Revenue Department,
Fort St.George, Chennai-600 009.
2. The District Collector, Erode District, Erode.
3. The Tahsildar, Anthiyur Taluk,
Anthiyur, Erode District.

- + 1 cc to Ms. S.P. Arthi, Advocate SR.9608
+ 1 cc to Mr. Government Pleader Sr.9382
+ 1 cc to MR. M.R. Jothimanian, ADvocate Sr.9184

W.P.No.30187 of 2017

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