

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
DATED: 31.07.2018  
CORAM  
THE HONOURABLE Mr.JUSTICE K.KALYANASUNDARAM

W.P.Nos.30451 of 2014 and 2776 of 2018  
and  
M.P.No.1 of 2014  
and  
W.M.P.No.3425 of 2018

1.Karpagammal (deceased) ... Petitioners  
2.G.K.Murugan in W.P.No.30451 of 2014  
3.K.Nagaraj

[P2 and P3 substituted as LRs of the deceased first  
petitioner,  
as per the order of this Court dated 31.07.2018  
in W.M.P.No.23320 of 2018 in W.P.No.30451 of 2014]

G.K.Murugan ... Petitioner  
in W.P.No.2776 of 2018

Vs.

- 1.The District Collector,  
Thiruvallur District,  
Thiruvallur.
- 2.The Revenue Divisional Officer,  
Ponneri - 601 204,  
Thiruvallur District.
- 3.The Tahsildar,  
Gummidipoondi,  
Thiruvallur District - 601 201.
- 4.The Executive Officer,  
Gummidipoondi Town Panchayat,  
Thiruvallur District - 601 201. ... Respondents 1 to 4  
(in both W.Ps)
- 5.The District Library Officer,  
District Commission for Libraries,  
Thiruvallur District.
- 6.The Director of General Library,  
Devaneya Pavanar Library,  
Anna Salai,  
Chennai - 600 002. ... Respondents 5 & 6  
in W.P.No.2776 of 2018

Prayer in W.P.No.30451 of 2014: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of mandamus, forbearing the respondents from evicting the petitioner in her property of an extent of 3 cents in S.No.559/A No.54, V.M.1<sup>st</sup> Street, Gummidipoondi, Thiruvallur District, without due process of law.

Prayer in W.P.No.2776 of 2018: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of mandamus, directing the respondents 1 to 3 to survey the land of the petitioner in S.No.559/A to the extent of 250 sq.ft according to the revenue records as per the proceedings of the 2<sup>nd</sup> respondent in Na.Ka.No.146/70/2016/A2, dated 01.10.2016 and as per proceedings of the District Revenue Officer in Na.Ka.14911/2016/A2, dated 19.07.2016 and as per proceedings of the second respondent in Na.Ka.No.1004/2017/A2, dated 05.04.2017 and as per the representation of the petitioner dated 7.6.2017.

For Petitioners : Mr.S.Doraisamy  
(in W.P.No.30451 of 2014)  
Mr.PA.Kadirvel  
(in W.P.No.2776 of 2018)

For Respondents : Mr.B.Anand  
Government Advocate for R1 to R3  
(in W.P.No.30451 of 2014)  
for R1 to R3 and R5 and R6  
(in W.P.No.30451 of 2014)  
Mr.N.Srinivas for R4  
(in both W.Ps)

#### C O M M O N O R D E R

The prayer in W.P.No.30451 of 2014, is for issuance of a writ of mandamus forbearing the respondents from evicting the petitioner from the property measuring an extent of 3 cents in S.No.559/A, No.54. V.M. 1<sup>st</sup> Street, Gummidipoondi, Thiruvallur District, without due process of law.

2. The prayer in W.P.No.2776 of 2018 is for issuance of writ of mandamus, to direct the respondents 1 to 3 to survey the land of the petitioner measuring an extent of 250 sq.ft in S.No.559/A in Gummidipoondi Village.

3. The case of the petitioners is that they have been in possession and enjoyment of the property for more than 40 years and Murugan, the petitioner herein had entered into a sale agreement with Chandra Sekara Chettiar to purchase the property, but, he refused to execute the sale deed and hence the petitioner Murugan instituted a suit in O.S.No.156 of 1996 before the District Munsif, Ponneri, which was decreed on 21.4.1997.

4. The grievance of the petitioner Murugan is that despite the order of this Court in W.P.No.37877 of 2015, the respondents have not conducted survey.

5. The learned counsel for the petitioners submitted that admittedly the petitioners are in possession and enjoyment of the property and they have been paying property tax to the local body. It is further submitted that the petitioners are ready to co-operate for enquiry, if a notice is issued under the Tamil Nadu Land Encroachment Act.

6. In the counter filed by the third respondent in W.P.No.30451 of 2014, it is stated that the writ petition in W.P.No.3195 of 2007 filed by Murugan was dismissed by the Division Bench of this Court on 21.3.2007. Subsequently, the respondents issued notice under the Tamil Nadu Land Encroachment Act, 1905, however, challenging the same he along with one Naghu @ Nagaraj and A.Champalal have filed writ petitions in W.P.Nos.25645, 25646 and 26048 of 2010 and this Court had dismissed all the writ petitions on 21.4.2011. Thereafter, they filed an appeal before the Collector, which was rejected on 02.01.2012. Since the writ petition in W.P.No.30451 of 2014 was admitted and interim injunction is granted, the respondents are not able to proceed further.

7. The fourth respondent / Executive Officer, Gummidipoondi Panchayat, has filed a detailed counter stating that the writ petitioner Murugan had filed a suit in O.S.No.17 of 2003 before the District Munsif, Ponneri, which was dismissed on 07.09.2010. He preferred an appeal against the judgment and decree, the Sub Judge, Ponneri in A.S.No.46 of 2010, on 31.10.2011 confirmed the findings of the learned District Munsif, Ponneri. It is further submitted that suppressing the earlier suit, the petitioners viz., Murugan and Karpagammal have jointly filed a fresh suit in O.S.No.135 of 2013 and hence he prayed for dismissal of these writ petitions.

8. Mr.B.Anand, learned Government Advocate appearing for the respondents 1 to 3 and Mr.N.Srinivasan, learned counsel for the fourth respondent would submit that the respondents issued notice under the Tamil Nadu Land Encroachment Act and the appeal preferred by the petitioners before the District Collector was dismissed and hence a direction may be issued to the authorities to evict the petitioners with necessary help of the police.

9. Perusal of the order of the District Collector would reveal that the said Murugan and Karpagammal preferred an appeal under Section 10 of the Tamil Nadu Land Encroachment Act, assailing the notice issued by the Tahsildar. It is further seen from the records that no enquiry was conducted pursuant to the notice issued under Land Encroachment Act. The Division Bench of this Court in the earlier writ petition

issued a direction to the respondents to evict the encroachment in S.No.559/A, after issuing notices to the encroachers in accordance with law. The petitioners suppressing the judgment and decree passed in O.S.No.17 of 2003 and A.S.No.46/2010, have filed a suit in O.S.No.135/13, seeking permanent injunction against the respondents.

10. Taking note of the above facts, this Court is of the considered view that the present suit in O.S.No.135 of 2013, has been instituted by abusing the process of law. Mr.PA.Kadirvel, learned counsel for the petitioner on instructions from the petitioner, Murugan who is present before this Court, has submitted that the petitioner would withdraw the Suit in O.S.No.135 of 2013. The learned counsel for the petitioners have also given undertaking that they are ready to co-operate for enquiry to be conducted by the official respondents for removal of encroachment and they will not file any other litigations challenging the notices.

11. In the light of the above facts, this Court, without going into the merits of the case, directs the respondents to issue a fresh notice under the Land Encroachment Act to the petitioners and after providing an opportunity of hearing, shall pass orders on merits and in accordance with law. The entire exercise shall be completed within a period of three months.

12. With the above direction, these writ petitions are disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

सत्यमेव जयते  
Sub Assistant Registrar

To

- 1.The District Collector,  
Thiruvallur District,  
Thiruvallur.
- 2.The Revenue Divisional Officer,  
Ponneri - 601 204,  
Thiruvallur District.
- 3.The Tahsildar,  
Gummidipoondi,  
Thiruvallur District - 601 201.

4.The Executive Officer,  
Gummidipoondi Town Panchayat,  
Thiruvallur District - 601 201.

5.The District Library Officer,  
District Commission for Libraries,  
Thiruvallur District.

6.The Director of General Library,  
Devaneya Pavanar Library,  
Anna Salai,  
Chennai - 600 002.

+2cc to Mr.PA.Kadirvel Advocate SR.NO.51956  
+1cc to Government Pleader SR.NO.52915, 52912  
+1cc to Mr.N.Srinivasan, Advocate SR.NO.51772  
+1cc to Mr.S.Doraisamy, Advocate SR.NO.51975

PVS (CO)  
sm:20.9.2018



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