

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

W.P.No.7721 of 2018

P.Narayanaswami

... Petitioner

vs.

1. Municipal Administration and Water Supply
Department,
rep. by the Principal Secretary,
Government of Tamil Nadu,
Secretariat, Chennai 600 009.
2. The Commissioner,
Pammal Municipality,
No.2, Dr. Ambedkar Salai,
Pozhichalur Main Road,
Pammal, Chennai 600 075.
3. The Collector,
Kanchipuram District,
Kanchipuram.
4. Palani

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus, directing the Respondents 1, 2 and 3 to remove the encroachment and restore the Park in between Ponni Nagar 1st Street and 2nd Street (Survey No.107/3 of LBDM/DDTP No.188/73), Pammal within a stipulated time.

For Petitioner	:	Mr.N.Sivakumar
For Respondents 1 & 3	:	Mrs.M.Lalitha, Government Advocate
For 2nd Respondent	:	Mr.P.Srinivas

O R D E R
(Order of the Court was made by M.VENUGOPAL,J.)

The Petitioner has preferred the present Writ Petition praying for passing of an order by this Court, directing the Respondents 1 to 3 to remove the encroachment and restore the Park in between Ponni Nagar 1st Street and 2nd Street (Survey No.107/3 of LBDM/DDTP No.188/73), Pammal, within a stipulated time.

2. Heard the Learned counsel for the Petitioner, the Learned Government Advocate appearing for Respondents 1 and 3 and the Learned Standing Counsel appearing for the 2nd Respondent. To avoid avoidable delay, notice to the 4th Respondent is dispensed with. No counter is filed on behalf of Respondents 1 and 3.

3. According to the Petitioner, he has served as an Assistant in the State Bank of India Co-operative Society in Chennai and now, he is a Pensioner. Further, he is the General Secretary of Pammal Tax Payers' Association (which is registered under the Societies Act, bearing Registration No.296/2004) and other social Organizations performing various social activities for the benefit of the general public. He is a resident of Pammal area, Eswaran Nagar, which is a part of Ponni Nagar 1st Street and Ponni Nagar 2nd Street.

4. The version of the Petitioner is that there is a 'Park' in between Ponni Nagar 1st Street and 2nd Street in Survey No.107/3 and DTCP Plan Approval Number LBDM/DDTP No.188/73, and that the said Park was used by the local residents as a 'Park', since the year 1973. It is represented on behalf of the Petitioner that the land in question was a 'Park land', according to DTCP Plan Approval No.LBDM/DDTP No.188/73, and it is classified as 'Park' as per Section 17(2)(b) of the Tamil Nadu Town and Country Planning Act, 1971, which is a designated open space and now, the same is encroached by the 4th Respondent for the past two years. Furthermore, during the years 2004 and 2006, the said Park was encroached upon and later, the said encroachments were removed after complaints were made to the 1st Respondent/Principal Secretary, Municipal Administration and Water Supply Department, Secretariat, Chennai. Since then, the Park was used for the children and local residents for recreational purposes.

5. At this stage, the Learned Counsel for the Petitioner submits that from the year 2015, slowly with the influence of local politicians and Officials, the 4th Respondent had encroached upon the land and now put up a permanent compound

wall around it and using it for catering purpose in a commercial nature. In fact, the Petitioner made numerous representations to the local authority and the Respondents 1, 2 and 3 on 06.09.2017 and 10.01.2018 to remove the encroachments in question and restore the same. Till date, there is no positive response from the concerned Officials. Hence, the Petitioner has filed the present Writ Petition praying for passing of an order by this Court in directing the Respondents 1 to 3 to remove the encroachments and restore the Park in between Ponni Nagar 1st Street and 2nd Street (Survey No.107/3 of LBDM/DDTP No.188/73), Pammal within a stipulated time to be determined by this Court.

6. In response, the Learned Standing Counsel for the 2nd Respondent contends that based on the request of the Petitioner and also after the receipt of notice in the Writ Petition, the 2nd Respondent had requested the Surveyor of Pammal Sub-Division to survey the lands in S.No.107/3 and sought a Report from him. Indeed, the Surveyor was requested to measure the lands and also report in regard to the entries in the Revenue Records in respect of the land in S.No.107/3.

7. The Learned Standing Counsel for the 2nd Respondent brings it to the notice of this Court that after survey of the lands, the Tahsildar, Pallavaram, through Letter dated 25.07.2018, had stated that the Surveyor had given a Statement on 24.07.2018 that the land as per the Sketch furnished by the Petitioner is a Ryot Punjai land and Patta for the same is registered in the name of Durgasalam and 5 others, as Patta land.

8. In this connection, the Learned Counsel for the 2nd Respondent/Municipality comes out with a plea that the Petitioner has neither mentioned in his Writ Petition as to when the Layout was approved and whether the Park as per his claim was marked out and gifted or handed over to the Local Body concerned. Furthermore, only when the Layout is approved and the same is formed by its authors, the lands that are reserved for the roads and public sites such as Parks have to be handed over to the Local Body concerned. Moreover, in respect of Ponni Nagar, there is no available records in LPDM/DDTP No.188/73 obtained approval from the Office of the Deputy Director of Town and Country Planning, Chengalpet, vide his Letter No.8373/2018/Se.Ma3, dated 31.07.2018. Also that, for further clarification, the Deputy Director of Town and Country Planning is the proper authority, who is to clarify the same.

9. The prime plea taken on behalf of the 2nd Respondent/Commissioner, Pammal Municipality is that only when the Layout is formed and the Park is designated by the Land Owners and handed over to the Municipality, the 2nd

Respondent/Municipality can take action to maintain the Park, thereby preventing encroachments. In short, as per the Statement furnished by the Tashildar, Pammal Municipality and as per the Survey Report, the Petitioner's claim does not pertain to the any Approved Layout and in fact, the Park Site is in the Layout in S.No.85/1, approved Ponni Nagar, Bharathiyar Street in Pammal Village. As such, the claims of the Petitioner are not genuine and without any valid records.

10. In the present case, it transpires that the Land Surveyor, Pammal Circle, vide Na.Ka.No.746/2017/F1, dated 24.07.2018, categorically submitted that the land in S.No.107/3 in regard to the Park was inspected in the presence of the Municipality Survey Inspector and other Office Assistants and based on the scrutiny of Village records, Survey No.107/3 in the Site Plan furnished to the 2nd Respondent/Municipality, was allotted to the Park and presently, in the said place, fence was put up and in enjoyment and further in the Village Accounts, for Survey No.107/3, it is mentioned as 'Ryot Punjai' measuring 0.05.00 vide Patta No.5292 filed in the name of Durgasalam and 5 others.

11. In the light of the divergent stand taken by the Petitioner and the 2nd Respondent/Municipality, this Court, at this stage, without expressing any opinion on the merits of the subject matter in issue, directs the 3rd Respondent/Collector, Kanchipuram District to look into the representations of the Petitioner, dated 06.09.2017 and 10.01.2018 in regard to the removal of encroachments in the Park, within a period of one week from the date of receipt of a copy of this order.

12. Later, the 3rd Respondent/District Collector, Kanchipuram District is directed to issue notice to the Petitioner for an enquiry, by specifying the date and time. On that specific date and time, the Petitioner is directed to appear before the 3rd Respondent and the 3rd Respondent is directed to hear the Petitioner, in connection with his representations dated 06.09.2017 and 10.01.2018 submitted by him. In the said enquiry, it is open to the Petitioner to raise all factual and legal issues before the 3rd Respondent, who shall take note of the same and pass appropriate final orders on the said representations of the Petitioner, in a quantitative and qualitative manner, within a period of five weeks thereafter. If the Petitioner requires any opportunity of personal hearing, the same may be granted by the 3rd Respondent, after adhering to the principles of Natural justice.

13. It is open to the Petitioner to produce any certified copy of the document, Approved Plan, etc. before the concerned authority pertaining to the 'Park' in question, which is

purportedly encroached by the 4th Respondent. Even otherwise, if the 3rd Respondent/Collector, Kanchipuram District comes to an independent conclusion that the 4th Respondent, without any authority had encroached and presently squatting on the property, without any rhyme or reason, viz. the 'Park' in between Ponni Nagar 1st Street and 2nd Street, Pammal, then, the 3rd Respondent/District Collector, Kanchipuram District, is directed to take necessary steps to remove the encroachment, because of the reason that in the Village Accounts, Survey No.107/3 is shown as 'Ryot Punjai' measuring 0.05.00 bearing Patta No.5292 (Joint Patta), standing in the name of Durgasalam and 5 others. Liberty is granted to the 3rd Respondent/District Collector, Kanchipuram District to subjectively decide as to whether notice has to be issued to the aforesaid Durgasalam and 5 others, if need be/situation so warrants, before passing final orders. It is equally open to the 3rd Respondent/District Collector, Kanchipuram District to issue notice to the 4th Respondent (alleged encroacher) and also to hear him, enquire him as to how he is running the Commercial Catering Activity in the subject property.

With the aforesaid observations and directions, the Writ Petition stands disposed of. No costs. Consequently, connected W.M.P.No.9635 of 2018 is closed.

Sd/-

Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

(aeb)

To:

1. The Principal Secretary,
Municipal Administration and Water Supply Department,
Government of Tamil Nadu,
Secretariat, Chennai 600 009.
2. The Commissioner,
Pammal Municipality, No.2, Dr. Ambedkar Salai,
Pozhichalur Main Road,
Pammal, Chennai 600 075.
3. The Collector,
Kanchipuram District, Kanchipuram.

+1cc to Mr.N.Sivakumar, Advocate SR.No.61399

+1cc to Government Pleader SR.No.61772

W.P.No.7721 of 2018

GMV(18/09/2018)