

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.08.2018

Coram:

THE HON'BLE MR.JUTICE M.VENUGOPAL
AND
THE HON'BLE MRS.JUSTICE S.RAMATHILAGAM

W.P.No.21235 of 2018

P.Kaliamoorthy ... Petitioner

vs.

1.The District Collector,
Nagapattinam,
Nagapattinam District.

2.Revenue Divisional Officer,
Mayiladuthurai-609 001
Nagapattinam District

3.Tahsildar,
Sirkali Taluk,
Sirkali,
Nagapattinam District.

4.Ms.K.Jagan

5.Mrs.P.Shylamadevi

6.Ms.A.Selvakumar ... Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus directing the Respondents 1 to 3 to remove the encroachments and restore West Street of Tairunagar, Sirkalai Taluk, Nagapattinam District, encroachers and to evict the unauthorised occupants, by considering the Representation dated 02.08.2017, made by the Petitioner.

For Petitioner : Mr.P.Ganesan

For Respondents : Mr.J.Pothiraj, Spl.G.P.
For R1 to R3

ORDER

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

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 to restore the West Street of Tairunagar, Sirkali Taluk, Nagapattinam District and to evict the 'unauthorised occupants', by considering his Representation, dated 02.08.2017.

2.Heard the Learned Counsel for the Petitioner and the Learned Special Government Pleader for R1 to R3.

3.No counter is filed on behalf of R1 to R3.

4.To avoid an avoidable delay, notice to the R4 to R6 is dispensed with.

5.According to the Petitioner, he is a retired General Manager in Aviation Safety, Airports Authority of India, Chennai Airport, Chennai. He and his family members are agriculturists and they are doing agricultural operation in their land. He had purchased a piece of dry land in Survey Nos.328/1A, 328/1B, in West Street of Thirunagari Village at Sirkali Taluk, Nagapattinam District in the month of January 2016 from one Sathyanarayanan and Mr.Ramakrishnan, who are founder family of SMH High Schools and other Educational Institutions, grounds in Sirkali and presently, they are living at Chennai. The Petitioner entered a Sale Deed on 27.4.2016 with them and registered the said Document at Sirkali Sub-Registrar Office, Sirkali. Hence, he had become an owner of the said property. After purchasing the land, the Petitioner had surveyed his land and carried out the boundaries of his land. A road is coming from East to West and it takes a turn in front of East of his land and the road is proceeding towards South side. From the East side of his land in Survey No.381/1A, 2B South Street, Tairunagar, Sirkali Taluk, Nagapattinam District and road side were occupied by 'unauthorised persons' and they have also put up temporary sheds. As such, the 'Travellers' and the 'Road walkers' are not able to have an access on either side of the Road. Apart from that, the 'unauthorised occupants' are not permitting the general public and farmers to proceed to their cultivable lands. Hence, the Petitioner had lodged a complaint before the 3rd Respondent/Tahsildar, Sirkali Taluk, Sirkali, Nagapattinam District. Other Agriculturists have also given similar Representations like the Petitioner, for removing the encroachments and restoring the Government Road, so as to enable the Villagers to reach their lands. Since the Respondents had

not taken any action, the Petitioner has preferred the present Writ Petition.

6.At this stage, the Learned Counsel for the Petitioner submits that the Petitioner, apart from his earlier Representation, dated 02.08.2017, addressed to the Third Respondent/Tahsildar, Sirkali, Nagapattinam District, had also submitted another Representation before the First Respondent/District Collector, Nagapattina, Nagapattinam District, on 08.01.2018, with a request to take appropriate action in evicting the encroachers on the Road side of West Street of Thirunagari, Sirkali, Nagapattinam District and to evict the 'unauthorised occupants'. The grievance of the Petitioner is that there is no response even from the First Respondent/District Collector, Nagapattinam, for his Representation.

7.In response, the Learned Special Government Pleader for the Respondents 1 to 3 informs this Court that the 3rd Respondent/Tahsildar, Sirkalai Taluk, Sirkalai, Nagapattinam District will take necessary action in the subject matter in issue within a time limit to be determined by this Court.

8.As a matter of fact, the Petitioner, in his Representation dated 02.08.2017 at paragraph No.2 had stated the following:

"The Surveyor of Sirkali was carried hout survey in the second week of July 2016 with the intimation to nearby land owner and identified the boundary of the above Survey Nos.381/1A and 381/1B and stones were placed for boundaries. After the survey it was found that, the total boundary of east side was occupied with following occupants:

- 1)Venkatesan 1400 sq.ft
(West st.,Thirunagari, Sirkali)
- 2)K.Jagan 2152sq.ft
(west st.,Thirunagari, Sirkali)
- 3)Balaguru 1400sq.ft
(west st.,Thirunagari, Sirkali)
- 4)S.Selvakumar 1400sq.ft
(west st.,Thirunagari, Sirkali)
- 5)J.Balakrishnan 1400sq.ft
(west st.,Thirunagari, Sirkali)
- 6)Boss 1400sq.ft
(west st.,Thirunagari, Sirkali)

7)T.Srinivasan 1400sq.ft
(west st.,Thirunagari, Sirkali)

In the connection of the above, for Sl.No.1 to 7 are continuously occupied my total east boundary without any gap. I am not able to enter my property because of free patta and unauthorised occupants Mr.Venkatesan, Mr.Balaguru and Mr.Boss etc.in East side, west side paddy fields, south side Mani and North side Murugesan and Others."

and ultimately prayed for taking suitable action to evict the unauthorised occupants, viz., Venkatesan, Balaguru, Boss of West St, Thirunagari, to get entry into his land for construction and development activities of site at West St.Thirunagari.

9.It must be borne in mine that no individual has any vested right to utilise a public property for their private purpose without there being any valid authorisation in this regard, from the appropriate authority. Undoubtedly, the encroachment of public places, being a 'continuing wrong', must be taken note of by the Authorities concerned and diligently and swiftly action ought to be taken without any laxity or hastiness to remove the same. Even without any oral or complaint in writing, the Concerned Authorities are to act in regard to the encroachments in public places, in the considered opinion of this Court.

10.It is not out of place for this Court to make a significant mention that T.N.Patta Pass Book Act, 1983 is meant for issuance of 'Patta Pass Book' to the holders of agricultural lands. In fact, Section 3 of the Act 1983 speaks of 'Issue of Patta Pass Book'; Section 4 deals with 'Presumption of Correctness of entries in the patta pass book'; Section 5 relates to 'Making of entries of registration of alienation or transfer in the patta pass book'; Section 6 says that 'Entries in the patta book to be prima facie evidence of title'; Section 10 of the Act 1983 enjoins 'Modification of entries in the patta pass book'; Section 11 of the Act speaks of 'Persons to furnish information'; Section 12 provides for filing of an 'Appeal' against an order made by the Tahsildar and Section 13 of the Act refers to filing of 'Revision' against the Order passed by any Tahsildar or an Appellate Authority; Section 14 of the Act relates to 'Bar of suits'. Section 23(1) of the Act, 1983 points out that the Tahsildar shall 'Issue a patta pass book for house site' owned by him.

Apart from the above, Explanations (a), (b), (c) to Section 23(2) run as under:

"(2) Save as otherwise provided in this Act, the provisions of this Act and the rules made thereunder shall, so far as may be, apply in relation to the issue of patta pass book for house side under this Section as they apply in relation to the issue of patta pass book for land under this Act.

Explanation-For the purpose of this Section-

(a) "house site" means a plot of land held for building purposes, whether any building is actually erected thereupon or not and includes the open ground or courtyard enclosed by or adjacent to, any building erected thereupon but does not include land as defined in clause (4) of Section 2;

(b) "Owner" means any person holding house site in severalty or jointly or in common either as full owner or limited owner, but does not include a mortgagee, lessee or tenant;

(c) "Patta pass book" means the patta pass book issued under this Section".

Be it noted that Form-I under Tamil Nadu Patta Pass Book Rules, 1987 says that

11. Apart from the above, Section 14 of the Tamil Nadu Patta Pass Book Act, 1983, under the head 'Bar of suits', runs as under:-

"14. Bar of suits - No suit shall lie against the Government or any officer of the Government in respect of a claim to have an entry made in any patta pass book that is maintained under this Act or to have any such entry omitted or amended:

Provided that if any person is aggrieved as to any right of which he is in possession, by an entry made in the patta pass book under this Act, he may institute a suit against any person denying or interested to deny his title to such right, for a declaration of his rights under Chapter VI of the Specific Relief Act, 1963 (Central Act 47 of 1963); and the entry in the patta pass book shall be amended in accordance with any such declaration."

12. Considering the fact that the Petitioner's First Representation dated 02.08.2017, addressed to the Third Respondent/Tahsildar, Sirkali, Nagapattinam District, on the

subject of 'irregularities in issuing illegal free pattas to the people in West Street, Thirunagari and to prevent his entry into his land' and another Representation of the Petitioner, dated 22.09.2017, addressed to the Revenue Divisional Officer, Mayiladuthurai, followed by an E-mail dated 26.09.2017 addressed to the Revenue Divisional Officer, Mayiladuthurai, and another E-mail dated 22.12.2017 addressed to the First Respondent/District Collector, Nagapattinam, followed by a reminder dated 08.01.2018, have not seen the light of the day, at this stage, this Court, simpliciter, without delving deep into the subject matter in issue and also not expressing any opinion on the merits of the matter, directs the 3rd Respondent/Tahsildar, Sirkali Taluk, Sirkali, Nagapattinam District, to look into the Petitioner's Representation dated 02.08.2017 with all seriousness and earnestness and to dispose of the same within a period of six weeks from the date of receipt of copy of this Court, of course, after providing necessary opportunity of 'personal Hearing' to the petitioner and the Respondents 4 to 6, by adhering to the Principles of Natural Justice. It is open to the Petitioner to raise all factual and legal pleas before the 3rd Respondent. The 3rd Respondent/The Tahsildar, Sirkali, Nagapattinam District, shall pass a reasoned speaking Order in a fair, just, unbiased and in a dispassionate manner, based on the Representation of the Petitioner dated 02.08.2017, by applying his thinking mind. In case, if the 3rd Respondent/Tahsildar, Sirkali, Nagapattinam District, comes to a conclusion that the encroachers/unauthorised occupants are to be removed from the subject land in issue, then, it is open to him to take such action in accordance with law(after following due procedure) as he deems fit and proper, by removing the encroachments in the subject matter in issue. This exercise shall be carried out by him as expeditiously as possible.

With the above observations/directions, the Writ Petition shall stand disposed of. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1.The District Collector,
Nagapattinam,
Nagapattinam District.

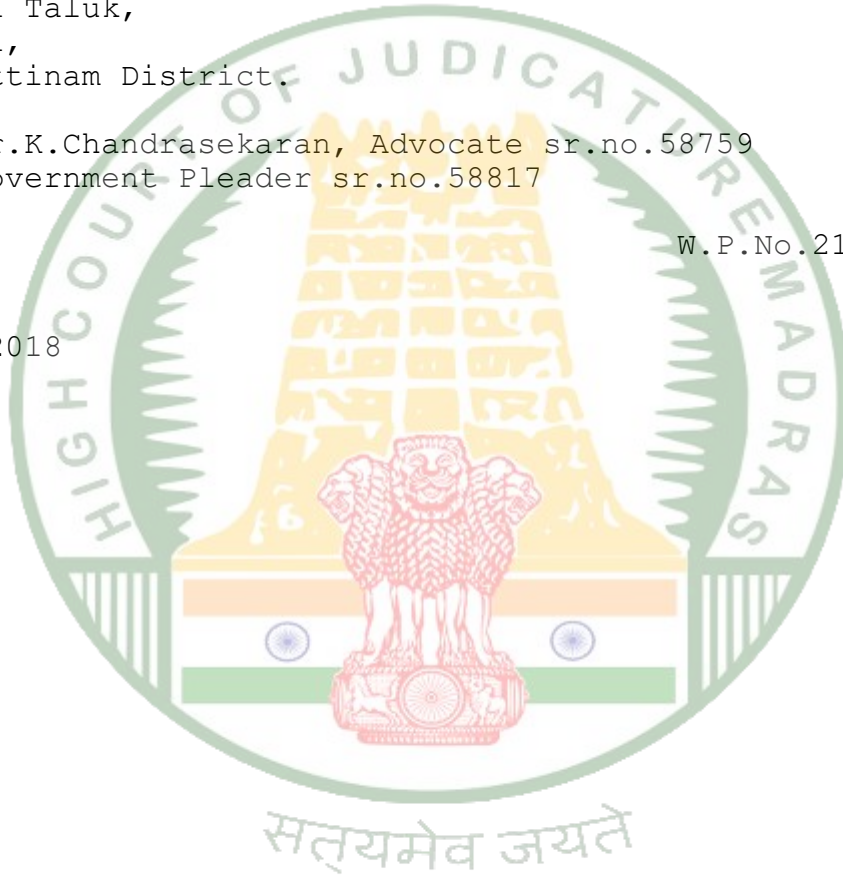
2.Revenue Divisional Officer,
Mayiladuthurai-609 001
Nagapattinam District

3.Tahsildar,
Sirkali Taluk,
Sirkali,
Nagapattinam District.

+1cc to Mr.K.Chandrasekaran, Advocate sr.no.58759
+1cc to Government Pleader sr.no.58817

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gmr (co)
nr 11/09/2018



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