

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2018

CORAM:

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

W.P.No.34115 OF 2017
and W.M.P.No.37866 of 2017
and 1668/2018.

S.Srinivasan

... Petitioner

vs.

1. The District Collector,
O/o. District Collector,
Cuddalore District.
2. The District Head Surveyor,
O/o.Town Surveyor,
Cuddalore Taluk Office,
Cuddalore District.
3. The Tahsildar,
Cuddalore Taluk Office,
Cuddalore District.
4. The Revenue Inspector,
Cuddalore Taluk Office,
Cuddalore District.
5. The Executive Engineer,
TANGEDCO,
7A, Nellikuppam Main Road,
Kondur, Cuddalore.

... Respondents

(R5 suo motu impleaded by this Court on 30.01.2018 in W.P.No.34115 of 2017)

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus, forbearing the Respondents from interfering with the Petitioner's lawful possession of his property situated at S.Nos.89/3, 189/5 & 189/2F1E, 189/6, Block No.6, Ward No.6, Bharathi Road, Pudupalayam Village, Cuddalore, either by way of demolishing or any other means, without following due process of law, as contemplated under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 and consequently direct

the Respondents to restore the demolished superstructure forthwith.

For Petitioner :Mr.A.Tamilvanan,
for M/s.E.Vijay Anand

For Respondents 1 to 4 :Mr.S.R.Rajagopal,
Addl. Advocate General
assisted by
Mr.A.N.Thambidurai,
Special Government Pleader

For 5th Respondent :Mr.M.Varun Kumar

O R D E R

(Order of the Court made by S.VAIDYANATHAN,J.)

The Petitioner has filed the present Writ Petition seeking to forbear the Respondents from interfering with his lawful possession of his property situated at S.Nos.89/3, 189/5 & 189/2F1E, 189/6, Block No.6, Ward No.6, Bharathi Road, Pudupalayam Village, Cuddalore, either by way of demolishing or by any other means and for a consequential direction to the Respondents to restore the demolished superstructure forthwith.

2. According to the Petitioner, he is the absolute owner of the property situated at S.Nos.89/3, 189/5 & 189/2F1E, 189/6, Block No.6, Ward No.6, Bharathi Road, Pudupalayam Village, Cuddalore Municipality. Originally, the Petitioner and his brother viz. S.Kannan, purchased the said property in the year 1999 and even prior to the purchase of the said property, the Petitioner and his brother were tenants in the said premises from 1997 onwards. After purchase, a commercial complex in the said property was constructed by him and his brother, after obtaining proper approval from the Municipality and completed the construction in the year 2015 in accordance with the Plan.

3. It is further stated by the Petitioner that in the last week of November 2017, the officials of the 2nd Respondent surveyed his property and made some markings in the property indicating that those portions need to be demolished. Hence, the Petitioner immediately approached the 1st Respondent on 05.01.2017 and requested him to redo the survey as per the Plan and FMB. In response to his request, the officials of the 2nd Respondent were deputed to resurvey the land on 14.12.2017 and on that day, the 2nd Respondent came with his team and surveyed only the inner side of the premises in the morning and did not measure S.No.190, where the Channel lies and the alleged encroachment is said to be made.

4. The Petitioner sent a Letter dated 14.12.2017 to the 1st Respondent, bringing to his knowledge about the irregular survey done by the officials of the 2nd Respondent and made it clear that there is no encroachment made by him. On 18.12.2017, the 2nd Respondent served a copy of the notice to the Petitioner that to ascertain the encroachment in S.No.190 channel, a survey is going to be conducted on 20.12.2017. The officials of the 2nd Respondent, revisited the property on 20.12.2017, and without conducting any resurvey, they left the place confirming the earlier survey and again, they orally reiterated that the property would be demolished forthwith and on the same day, they started demolishing the compound wall partly. On 23.12.2017, the 3rd and 4th Respondents along with their men came to the site and started demolishing his building and when the Petitioner questioned them about the non-serving of proper notice as contemplated under the Act, they ignored him and demolished the rear portion of his building partly and further stated that the remaining portions will be demolished shortly.

5. It is the contention of the Petitioner that the measurement of the Channel was drastically changed due to the encroachment by the persons on the other side and the officials have also changed the Survey map to suit the convenience of the encroachers, and issued Patta. According to the Petitioner, as per the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, the Survey Officer, shall, after completion of the survey of tanks, prepare a chart and register pointing out the boundaries of the tanks and other information necessary for the purpose of identifying the limits of tank, and hand over the same to an Officer of the Public Works Department, having control over such Tanks, as may be specified by the Government.

6. The PWD Officer referred to under Section 6(2) of the Act, shall, within one month from the date of handing over of the chart and register, publish a notice in such manner, as may be prescribed or pointing out the boundaries of the Tank. If such Officer is of the opinion that any person has encroached upon any land within the boundaries of the Tank and that the encroacher should be evicted, the Officer shall issue a notice under Section 7(1) of the Act in the manner as may be prescribed, calling upon the person concerned to remove the encroachment before a date specified in the notice. If the encroacher has not removed the encroachment and has not vacated the land within the boundaries of the Tank, the Officer, referred to in sub-Section (2) of Section 6, shall remove the encroachment and take possession of the land, within the boundaries of the tank encroached upon by taking the assistance of Police.

7. The grievance of the Petitioner is that none of the procedures contemplated under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 have been followed by the Respondents and that as per the said Act, only the Public Works Department has to take necessary steps to remove the encroachments, whereas, in his case, the 3rd and 4th Respondents, who are no way connected with the removal of encroachments, have demolished the rear portion of his property illegally, which is against the principles of natural justice and that the authorities have arrived at a pre-determined conclusion that there was an encroachment by the Petitioner.

8. This Court, by an order dated 28.12.2017, granted interim injunction till 22.01.2018. Seeking to vacate the same, the 3rd Respondent has filed a detailed counter on behalf of Respondents 1 and 4, wherein, it is stated as under:

8.1. The 3rd Respondent carried out eviction and removal of encroachments in Survey No.190, Ward 6, Block 6, Bharathi Road, Pudupalayam Village, Cuddalore. According to him, the procedure contemplated under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 has to be followed, only if the Channel belongs to Public Works Department and the Channel in Survey No.190, Bharathi Road, Pudhupalayam, does not belongs to Public Works Department, as such, the said Act is not applicable to the present case. The averment of the Petitioner that he has constructed his building as per plan approval is not correct and he has deviated from the approved plan and has not come to Court with clean hands.

8.2. Since Cuddalore District is a coastal zone and is more vulnerable to flooding, in order to protect the public from flooding, the District Administration took sincere efforts to protect water bodies and Channels from silting and is very keen in evicting the encroachments in the water courses, as per the guidelines of the Apex Court and G.O.(Ms) No.540 Revenue (LD6 (2)) Department, dated 04.12.2014. In this regard, a representation was received by the 1st Respondent requesting to desilt the Channel at Bharathi Road, Pudupalayam Village, stating that the same is fully filled with mud deposit, which may cause health hazards to the residing public.

8.3. The 2nd Respondent was directed to act on the said representation and accordingly, the said Channel was surveyed and a notice was issued to the encroachers under Section 7 of the Act vide Reference Na.Ka.A1/7586/2017, dated 29.11.2017 and a notice under Section 6 was issued vide Reference Na.Ka.A1/7586/2017, dated 14.12.2012. After conducting the survey, the 3rd Respondent sent a Report to the 1st Respondent regarding the nature and extent of encroachments in the Channel.

8.4. It is stated that Notice under Sections 7 and 6 of the Tamil Nadu Land Encroachment Act, 1905 was properly issued by the official Respondents to the Petitioner and only thereafter, the Petitioner approached the 1st Respondent to re-survey the Channel and the 1st Respondent/District Collector, Cuddalore directed to re-survey the said area by an Officer higher in rank than the Head Surveyor to ensure impartiality and avoid mistake of facts. Thereafter, the Inspector of Survey conducted the survey and submitted his Report to the Assistant Director (Survey), who, in turn submitted his Report to the 1st Respondent, vide Ref.No.Na.E4/6460/2017, dated 20.12.2017, wherein, he has stated that Divisional Inspector, Vridhachalam surveyed Survey No.190, Block 6, Ward 6, Cuddalore Town, as per the directions of the District Collector, Cuddalore, in addition to the procedure mandated by the statute to ensure fairness and impartiality and found that an extent of 0.0308.0 sq. mtrs. was encroached by way of compound wall and storeyed building by the Petitioner/Srinivasan.

8.5. The Inspector of Survey, as per the request of the Petitioner, resurveyed the "Channel" and it is not correct to state that the team surveyed only the inner side of the premises and did not measure Survey No.190, where the Channel actually lies. The Channel was encroached from both left and right sides and hence, the survey was done from the encroached area. The official Respondent had conducted proper survey to measure the width of the Channel and only on ascertaining the encroachments on the Channel, enforcement action was taken in accordance with law.

8.6. The original breadth of the Channel ranges from 12 feet to 30 feet and due to the encroachment made by the Petitioner on the western side of the Channel, it had changed its course slightly and runs to the eastern side in S.No.195/9, the patta land of Padmapriya, W/o.Santharaj. Therefore, the survey was done only as per the available revenue records. It is stated that the "width of the Channel as available in the revenue records is being restored and to achieve the same, the encroachments on the Channel have to be removed" and accordingly, encroachments were identified and marked and enforcement action has been taken in respect of all the encroachments. The Petitioner's property has not been interfered with by the Respondents, but, only the encroachments in Survey No.190 have been cleared and steps were taken to restore the extent of S.No.190 and that other than the Petitioner, one Bakthavatchalam, who had encroached the Eastern side of the Channel to an extent of 49 sq. ft. was also served with notice to remove the encroachment.

9. Mr.S.R.Rajagopal, Learned Additional Advocate General, appearing for the Respondents 1 to 4 submitted that videographs

were taken when re-survey was done and a statement was also obtained from the encroachers. He further submitted that due to the encroachment of the Petitioner in the western side of the Channel, the Channel has changed its course in the eastern side with a little bend and runs in the patta land and that the Petitioner has encroached various extents from 1.2 mtrs to a maximum of 7 mtrs. totaling an extent of 0.0308.0 Sq. mtrs.

10. According to the learned Additional Advocate General, the Respondents are taking action only to remove the encroachments in the Government land, i.e. "Vaikkal Poramboke" and they have not interfered with the private property of the Petitioner at any time. It is also his submission that Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 is not applicable to the case of the Petitioner and that the Respondents have no objection for following the survey procedures once again.

11. As on date, the building in question has not been constructed by the Petitioner in accordance with the approved Plan and there is a distance of only 6 metres between the Channel and the building in question and till date, Building Completion Certificate has not been given. That apart, the relief sought by the Petitioner is with regard to S.Nos.89/3, 189/5 & 189/2F1E, 189/6, Block No.6, Ward No.6, Bharathi Road, Pudupalayam Village, Cuddalore and not with regard to Survey No.190. Furthermore, the Plan produced by the Respondents in favour of the Petitioner clearly shows that a lot of distance need to be maintained between the Petitioner's building and the Channel. Photographs produced by the Respondents also show that there are debris, which have blocked the Channel, thereby preventing free flow of water from north to south direction.

12. From the pleadings of the parties, it is very clear that the Respondents have endeavored to redeem the Channel in S.No.190. It is open to the Respondents to insist upon a Building Completion Certificate to be obtained by the Petitioner. According to the Respondents, the building has not been constructed in accordance with the Approved Plan. Moreover, the relief sought by the Petitioner does not relate to S.No.190 and hence, the Petitioner is not entitled to any relief, much less the relief sought in this Writ Petition.

13. It is needless to point out that the Petitioner will have to obtain Building Completion Certificate from the 3rd Respondent, in terms of the Rules and Regulations. Till such time the Completion Certificate is obtained, the Electricity Board in that area shall not effect electricity service connection to the building in question.

14. The Petitioner shall forward the Building Completion Certificate obtained from the competent authority, to the concerned Electricity Board, in order to effect electricity connection to the building in question. Once the Building Completion Certificate is issued, the building shall be inspected and thereafter, electricity supply shall be effected, if the building so constructed, is in order. It is made clear that after completion of the building and obtaining of Building Completion Certificate, if any further construction is made and the same is found on inspection, the violated portion need to be razed to ground. The Petitioner, cannot, later contend that he has right to file a Petition seeking regularisation and it will not be accepted by anyone much less the authorities, as the Petitioner is put on notice by this order that the violated portion will be demolished. It is further made clear that the authorities, who entertain and pass orders regularizing the violated portion, will be dismissed from service.

The Writ Petition is disposed of with the above observation (s) and direction(s). No costs. Consequently, connected W.M.P.No.37866 of 2017 and W.M.P.No.1668 of 2018 is closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

(aeb)

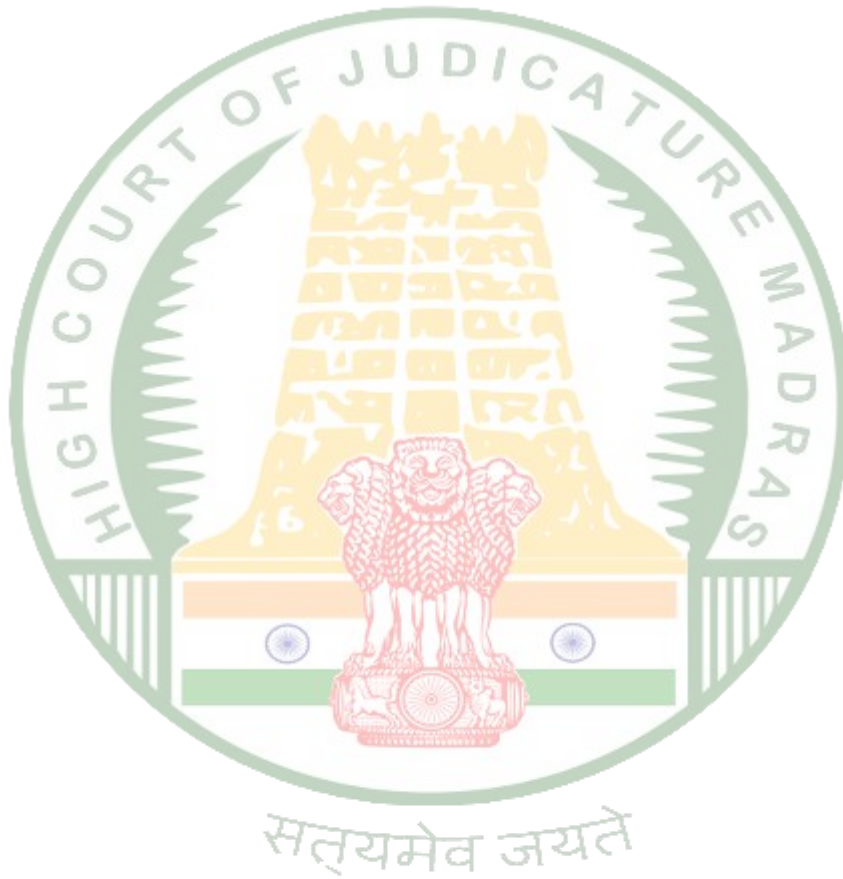
To:

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Cuddalore District.

+1 CC to Mr.E. Vijay Anand, Advocate sr 6834.
+1 Cc to Govt. Pleader sr 7001.

W.P.No.34115 of 2017

SP(07/03/2018)



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