

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:11.09.2018

CORAM

THE HON'BLE Mr. JUSTICE M.VENUGOPAL
and
THE HON'BLE Mrs. JUSTICE S.RAMATHILAGAM

W.P.No.23721 of 2018
and
W.M.P.No.27668 of 2018

1.V.S.Chinnasamy
2.V.S.Elango

..Petitioners

Vs.

1.The District Collector,
Erode District,
Erode.

2.The Tahsildar,
Kodumudi Taluk,
Erode District.

3.The Additional Director of Panchayat,
Kilambadi Town Panchayat,
Erode Taluk & District.

4.The Executive Officer,
Kilambadi Panchayat,
Vattakkalvalasu,
Erode District.

5.Veerappan

6.Saravanan

7.S.Murugesan

..Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF MANDAMUS directing the Respondent No.2 to conduct enquiry as per his proceedings in O.Mu.18231/2015 Aa6, dated 27.09.2015 and consequently direct the official respondents 1 to 4 to remove the encroachments made by the respondents 5 to 7 in the Government Salai Poramboke in S.F.200/ 16 & 18 in Kombupalayam, Kilambadi "B" Village, Kodumudi Taluk, Erode District.

For Petitioners : M/s.M.Guruprasad
R.Shase & C.Ramaraj

For RR 1 to 3 : Mr.J.Pothiraj
Special Government Pleader

For 4th Respondent : Mr.P.S.Sivashanmugasundaram
Special Government Pleader

O R D E R

[Order of the Court was made by M.VENUGOPAL, J.]

Heard the Learned Counsel for the Petitioner; Mr.J.Pothiraj, Learned Special Government Pleader for Respondents 1 to 3 and Mr.P.S.Sivashanmugasundaram, Learned Special Government Pleader takes notice for the 4th Respondent.

2.To avoid an avoidable delay, notice to the Respondents 5 to 7 is dispensed with. No counter is filed on behalf of the Respondents 1 to 4.

3.According to the Petitioners, they both own agricultural lands in S.F.Nos.203/1, 203/2, 204/3, 205/3, and 205/6 of Kombupalayam, Kilambadi "B" Village, Erode Taluk, Erode District. There is an east west pathway situated in S.F.No.200/16, 18 and is the viable entry to the 1st Petitioner's agricultural lands and is using the same pathway as a cart track. If the pathway is obstructed, they cannot enter into the property situated in the aforesaid survey numbers. Both the Petitioners have an extent of 10 acres in the aforestated survey numbers.

4.The grievance of the Petitioner is that the Respondents 5 to 7 has put up their construction obstructing the pathway to the Petitioners lands situated at S.F.200/16, 18. The Respondents 5 to 7 have also put up a construction in the Government Salai Poramboke without any permission from the authorities concerned. The Petitioners are unable to have proper access to the lands in the aforestated survey numbers. The Respondents 5 to 7 were requested by the Petitioners to remove their encroachments and enable them to have free access to the properties and their request was not heeded to and they continue to encroach further and caused lot of hardships to both of them. As a matter of fact, the 1st Petitioner addressed a Petition to the Respondents 1, 2 and 4 in regard to the encroachments made by Respondents 5 to 7 in Government Salai Poramboke in S.F.No.200/16, 18, the 2nd Respondent has initiated proceedings in Na.Ka.No.18231/2015 Aa6 dated 10.08.2015 and summoned everyone for an enquiry.

5.The Respondents 5 to 7, to circumvent an enquiry to be conducted by the official Respondents, had instituted Civil Suits in O.S.No.147 of 2015 and 153 of 2015 respectively before the Learned District Munsif and Judicial Magistrate Court, Kodumudi against the Petitioners and the Respondents 1, 2 and 4 seeking the relief of Permanent Injunction restraining the Petitioners and Respondents 1 to 4 from interfering with the Plaintiff's possession and enjoyment of the suit property. The 2nd Respondent issued a Memorandum in O.Mu.18231/2015 Aa6 dated 27.09.2015 stating that the the Encroachers had filed a suit before the appropriate Court, therefore, action will be taken based on the outcome of the said case.

6.It comes to be known that the aforesated two suits came to be dismissed after an elaborate trial and the Judgments dated 19.06.2017 and 13.04.2018 respectively were delivered. The trial Court in O.S.No.153 of 2015 for Issue No.2 had rendered a finding that it had no jurisdiction to try the case as per Section 14 of the Tamil Nadu Land Encroachment Act, 1905.

7.The plea taken on behalf of the Writ Petitioners before this Court is that there is no impediment for the official Respondents 1 to 4 to take necessary action in regard to the removal of encroachment. Since the authorities are not coming forward to remove the encroachment in question, the Petitioners have filed the present Writ Petition.

8.It transpires that the Civil Suit in O.S.No.153 of 2015 was filed by the 6th Respondent (in the Writ Petition) as Plaintiff against the Government of Tamil Nadu represented by District Collector, Erode District, Erode, (2) Tahsildar, Kodumudi Taluk, Erode District (3)the Executive Officer of Kilambadi Panchayat, Vattakkalvalasu, Erode Taluk (4) V.S.Chinnasamy and (5)Elango, the trial Court on 19.06.2017 had passed a Judgment holding that the Plaintiff (Saravanan - 6th Respondent) was not entitled to get the relief of declaration and the relief of permanent injunction and ultimately the suit was dismissed without costs. Also that, the 5th Respondent (in the Writ Petition) as Plaintiff filed O.S.No.146 of 2015 on the file of the District Munsif, Kodumudi against the Tahsildar, Erode (2) Government of Tamil Nadu represented by District Collector, Erode District, Erode (3) the Executive Officer of Kilambadi Panchayat, Vattakkalvalasu, Erode Taluk (4) V.S.Chinnasamy and (5) Murugesan and the said suit, after contest, came to be dismissed because of the reason that the trial Court as per Section 14 of the Tamil Nadu Land Encroachment Act, 1905 had no jurisdiction to try it.

9.In view of the dismissal of the two suits in O.S.No.153 of 2015 and O.S.No.146 of 2015 on the file of the trial Court as

aforestated, it is crystalline clear that there is no fetter on the part of the official Respondents 1 to 4 to act upon the alleged encroachment made by the Respondents 5 to 7. As a matter of fact, the Petitioners have come out with a categorical case that Respondents 5 to 7 had put up their construction obstructing the pathway, which is along the pathway situated at S.F.No.200/16, 18. At the risk of repetition, it is the stand of the Petitioners that the Respondents 5 to 7 had put up their construction in Government Salai without any permission from the concerned authorities. Obviously the official Respondents have not acted in a diligent, swift and god speed manner.

10. Therefore, without precipitating the matter any further and without any further loss of time, this Court, deems it fit and proper in directing the 2nd Respondent/Tahsildar, Kodumudi Taluk, Erode District to conduct the full-fledged enquiry as per Proceedings in O.Mu.18231/2015 Aa6, dated 27.09.2015 and after providing necessary opportunity to the Petitioners, the Encroachers viz., Respondents 5 to 7, by adhering to the Principles of Natural Justice and to pass a reasoned speaking order in the subject matter in issue. It is open to the respective parties (including the Petitioners and the Respondents 5 to 7) to raise all factual and legal pleas before the 2nd Respondent during the course of enquiry. In the event of the 2nd Respondent coming to the conclusion that the Respondents 5 to 7 had encroached upon the land in S.F.No.200/16 & 18, then, without any haziness or hesitation, they are directed to take appropriate steps in removing the obstruction and restoring the original position. If any resistance is offered by the Respondents 5 to 7, then, it is open to the official Respondents 1 to 4 to seek the assistance of Police and to remove the encroachment made in a lock and stock manner. It cannot be gainsaid that the 2nd Respondent shall pass an order, in the enquiry to be conducted by him, within a period of six weeks from the date of receipt of copy of this order.

11. With the aforesaid observations and directions, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sgl

Sd/-

Assistant Registrar(CS-CCC)

// True Copy//

Sub Assistant Registrar

To

1.The District Collector,
Erode District,
Erode.

2.The Tahsildar,
Kodumudi Taluk,
Erode District.

3.The Additional Director of Panchayat,
Kilambadi Town Panchayat,
Erode Taluk & District.

4.The Executive Officer,
Kilambadi Panchayat,
Vattakkalvalasu,
Erode District.

5.The Government Advocate, High Court, Madras.

+ 1 CC TO M/s.M.GURUPRASAD, ADVOCATE SR 63883

+ 1 CC TO THE GOVT. PLEADER, SR 63493

KR/9/10/18

W.P.No.23721 of 2018



WEB COPY