

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2018

CORAM:

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

W.P.No.27789 of 2017

M.Sarala

... Petitioner

vs.

1. The District Collector,
Office of the Kancheepuram
District Collector,
Kancheepuram.
2. The Kancheepuram District
Rural Development Officer,
District Rural Development Office,
Kancheepuram.
3. The Revenue Divisional Officer,
Revenue Divisional Office,
Kancheepuram,
Kancheepuram District.
4. The Regional Development Officer,
Office of the Joint Directorate of the Panchayats,
Kancheepuram District,
Kancheepuram.
5. The Tahsildar,
Taluk Office, Tiruporur,
Kancheepuram,
Kancheepuram District.
6. The Block Development Officer,
Tiruporur Taluk Office,
Kancheepuram District.
7. Venkatesan ... 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 to 6 to remove the encroachments in S.No.292, Thankuppam Village, of an extent of 7.50 acres, Thazhangal Lake Survey Nos.43, 44, 45, 46, 47 and Vannan Lake Survey No.304, Sattankadu Survey No.306/4 extent 1.50 acres,

316/12, Kalam Poramboke Land Survey No.307/9 extent of 0.20 cents, Survey No.187/3 - extent 3 acres, K.S.S.Nagar Poramboke Survey No.162/A, Survey No.4, Survey No.103 extent of 1.25 acres, Jayalakshmi Nagar Survey No.81-extent of 51 cents, Sakkli Kuttai, Parachai Kuttai Survey No.128, Survey No.107, etc., which was illegally converted by the 7th Respondent and also direct 1st to 6th Respondents to recover the above mentioned Government lands, which were encroached and transferred to the private parties.

For Petitioner : Mr.G.Mohammed Aseef

For Respondents 1 to 6 : Mr.A.N.Thambidurai,
Special Government Pleader

For 7th Respondent : Ms.S.Deepika

O R D E R

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

Heard the Learned Counsel for the Petitioner, Mr.A.N.Thambidurai, learned Special Government Pleader appearing for Respondents 1 to 6 and Ms.S.Deepika, learned Counsel appearing for the 7th Respondent.

2. According to the Petitioner, he is a Councillor of 3rd Ward of Kelambakkam Panchayat Union, Thiruporur Taluk, Kancheepuram District. The Panchayat Union President of Kelambakkam, viz. Venkatesan, the 7th Respondent herein is continuously doing corruptive and deceptive methods and abusing and misusing his Presidential powers. The stand of the Petitioner is that the 7th Respondent/Panchayat Union President had misappropriated, mismanaged and looted the Panchayat Union Public money as well as the public lands as per his whims and fancies and thereby, caused heavy loss to the Government Exchequer with the help and collusion of Revenue Officials and other Officials, who ought to be controlled. The 7th Respondent had looted many Public Welfare Scheme Funds as well as the Public Funds, as per his choice.

3. The grievance of the Petitioner is that the 7th Respondent had illegally converted so many Government Poramboke lands to the private parties personal land and also leased out the Government lands without following any procedures laid down under the law and thereby looted heavy amount from the encroachers/land grabbers and caused heavy loss to the Government Exchequer.

4. The Learned Counsel for the Petitioner submitted that in Sathankuppam Village, Survey No.292-Thoppu Poramboke land measuring an extent of 7.50 acres, was leased out to so many

persons illegally and thereby, obtained a lumpsum amount. Further, most of the Government Benefit Schemes for the poor and downtrodden people's Welfare Scheme are misused and mismanaged by the Panchayat Union President as per his choice and thereby, the poor people are not able to get the benefits of the Welfare Schemes of the Government.

5. The Learned Counsel for the Petitioner contends that the 7th Respondent, without following the Government Orders, without having any powers, misused his powers and approved so many real estate layouts and got a lumpsum amount from the real estate parties and also illegally approved building plans, without following legal procedures. Apart from that, so many land encroachers occupied the school place, public utility places, parks, etc, which are specially allotted for public purpose and the 7th Respondent (Venkatesan) illegally allowed all the encroachments and approved house building plans for illegal purpose.

6. The version of the Petitioner is that Thazhangal Lake Survey Nos.43, 44, 45, 46, 47 and Vannan Eri land Survey No.304, Sattankadu Survey No.306/4 measuring an extent of 1.50 acres, 316/2, Kalam Poramboke land Survey No.307/9 measuring an extent of 0.20 cents, Survey No.187/3, measuring an extent of 3 acres, K.S.S. Nagar Poramboke Survey No.162/A, Survey No.4, Survey No.103, measuring an extent of 1.25 acres, Jayalakshmi Nagar Survey No.81, measuring an extent of 51 cents, Sakkli Kuttai, Parachai Kuttai Survey No.128, Survey No.107, etc. of the Government lands are illegally allowed by the 7th Respondent to the land grabbers and thereby obtained many illegal amounts from the encroachers, thereby causing heavy loss to the Government Exchequer.

7. The Learned Counsel for the Petitioner proceeds to point out that one public utility Road in K.S.S. Nagar, measuring an extent of 6 feet was allowed by the 7th Respondent/Union Panchayat President to be encroached by some persons and now the 6 feet lane came down to 3 feet lane. Besides this, one Public Utility Well in K.S.S. Nagar was allowed to be encroached by some persons and they levelled the Public Utility Well and encroached the said Well as per their choice. Also, Jayalakshmi Nagar, Kuttai Poramboke Survey land No.81, is illegally allowed to be encroached by real estate grabbers by the 7th Respondent and thereby, he illegally obtained multi lakhs rupees from them for the favour done.

8. It comes to be known that on 17.07.2015, the Petitioner and others gave a complaint to all the Respondents herein with a view to take immediate action against the 7th Respondent/Panchayat Union President and remove him immediately from the Presidentship post and to recover the lands from all

the encroachers and also to recover the loss from all concerned. Hence, the Petitioner has filed the present Writ Petition seeking the relief of mandamus in directing the Respondents 1 to 6 to remove the encroachments in S.No.292, Thankuppam Village, of an extent of 7.50 acres, Thazhangal Lake Survey Nos.43, 44, 45, 46, 47 and Vannan Lake Survey No.304, Sattankadu Survey No.306/4 extent 1.50 acres, 316/12, Kalam Poramboke Land Survey No.307/9 extent of 0.20 cents, Survey No.187/3 - extent 3 acres, K.S.S.Nagar Poramboke Survey No.162/A, Survey No.4, Survey No.103 extent of 1.25 acres, Jayalakshmi Nagar Survey No.81- extent of 51 cents, Sakkli Kuttai, Parachai Kuttai Survey No.128, Survey No.107, etc., which was illegally converted by the 7th Respondent and also direct 1st to 6th Respondents to recover the above mentioned Government lands, which were encroached and transferred to the private parties.

9. Per contra, it is the submission of the Learned Special Government Pleader appearing for Respondents 1 to 6 that the irregular activity of the Panchayat President as per the averments of the Writ Affidavit come under the control of Additional Collector (Panchayat Development) and the remaining contents of the Writ Affidavit reflect the encroachment of Government Poramboke lands in respect of Pudupakkam and Kelambakkam Villages, which run as under:

S.No .	Village Name	Survey No.	Extent	Classification	Remarks
1	Pudupakkam Village	292	3-03-5	Thoppu	As per the Adangal entries Encroachment made by 1. Padma (Thennai Maram) 2. Dhiviya Deepthi (Thennai Maram) 3. Babuji Jacob (Susilheri School with Thennaimaram)
2	Pudupakkam Village	303, 304	5-34-0	Vannan Eri	1.Habibunisaa, Masoothi and two others (Thennai Maram) 2.Encroachments by way of Houses made by 10 persons

S.No .	Village Name	Survey No.	Extent	Classification	Remarks
3	Pudupakkam Village	306/4	0-04-5	Punjai Anadeenam	As per the adangal entries encroachments were made by way of 14 houses
4	Pudupakkam Village	307/9	0-140	Kalam Poramboke	Government has given free house site pattas to the Irulars
5	Pudupakkam Village	310/21 311/22 317/15 318/1B	0-05-0 0-05-0 0-07-0 0-19-5	Vaai kal Poramboke Vaaikal Poramboke Vaaikal Poramboke Vaaikal Poramboke	Several Encroachments were made by way of construction of houses and road. It was happened by the private persons making unauthorised and unapproval layouts
6	Pudupakkam Village	316/12	0-08-0	Kuttai Poramboke	Encroachment made by way of construction of houses
7	Kelambakkam Village	4	4-91-0	Pungan Thangal Eri	Encroachments by way of Houses
8	Kelambakkam Village	43	3-17-0	Thazan Thangal Eri	Encroachments by way of Houses
9	Kelambakkam Village	44	0-07-0	Thazan Thangal Eri	These land kept vacant
10	Kelambakkam Village	45	0-06-0	Highways Poramboke	Road
11	Kelambakkam Village	46	0-10-5	Thazan Thangal Eri	These land kept vacant
12	Kelambakkam Village	47	0-06-0	Thazan Thangal Eri	These land kept vacant
13	Kelambakkam Village	81	0-20-5	Kulam Poramboke	Encroachments by way of Houses
14	Kelambakkam Village	103	0-36-5	Nanjai Tharisu	Encroachments by way of Houses

S.No .	Village Name	Survey No.	Extent	Classification	Remarks
15	Kelambakkam Village	107	0-29-0	Kulam Poramboke	Encroachments by way of Houses
16	Kelambakkam Village	128/1	0-30-0	Grama Natham	Encroachments by way of Houses
		128/2	0-13-5	Kualm Poramboke	Encroachments by way of Houses
17	Kelambakkam Village	162	0-10-0	Adi-Dravidar Kudiruppu	Necessary House Site Pattas were given some other beneficiaries by the Government
18	Kelambakkam Village	187/3	0-03-5	Ryotwari Nanjai Land	Private Party Patta land of Thiru. Dhaniyel

The aforesaid entire encroachments/encroachers have not been removed and only after taking clear measurement with the aid of Field Surveyor and after coming to know the actual extent of encroachment and also following the procedures in a proper manner, the encroachers will be evicted in accordance with the Guidelines/Rules/Regulations and relevant Government Orders of the Government.

10. The Learned Special Government Pleader brings it to the notice of this Court that the encroachments will be removed, if a reasonable time is granted by this Court to the authorities concerned. The 7th Respondent, in his counter, had averred that the Petitioner has not specified in his application in the Writ Affidavit about who had looted the property in question and that the property in S.No.292 of Sathankuppam Village was encroached very long back and during his tenure as President of Panchayat, he does not have any authority to lease out the property to the third parties.

11. The 7th Respondent adds in his counter that he had successfully introduced Welfare Schemes as the elected head of the Village, such as NREGES, Clean India, Hygienic Toilets for everyone, Self Sufficient Scheme (Namakku Name Thittam), Thalai Thittam, Graveyard Development, 100 days Compulsory Employment Scheme, Graveyard Development, etc. Moreover, he had denied misuse of his powers and in short, the Petitioner, according to the 7th Respondent, cannot make allegations on her own and the fact of the matter is that no Panchayat President had approved any Plan without following the procedures. As a matter of fact, the Petitioner had not shown any material element to prove that

the 7th Respondent had committed irregularity in granting building permissions. Per contra, all the permissions were granted after passing Resolutions by the Grama Sabha in majority.

12. It is to be noted that the 7th Respondent in his counter, at paragraph 17, had proceeded to make a significant mention that "even the Petitioner's husband has encroached a Government Poramboke Land comprised in S.R.No.138/1C on OMR Stretch" and in this regard, the 7th Respondent had sent a notice through Panchayat and this is the cause for the Petitioner to file the present Writ Petition. Also, the 7th Respondent had filed cases relating to encroachment of Graveyard, encroachment of water bodies, etc. in W.P.No.35888 of 2016 and the same is pending.

13. The contention of the 7th Respondent (as seen from the counter) is that the Petitioner, with an ulterior motive, has thought it fit to level allegations against him without any truth and material evidence. In reality, his tenure was over in October 2017 and now, it is the Block Development Officer, who is the Executive Officer of the Panchayat, and the Petitioner has filed the present case after the 7th Respondent's active tenure, for the reasons best known to her. In regard to the retrieval of water bodies from private parties, the 7th Respondent does not have any objections and he had not converted any land illegally and more so, he does not have power in this regard and it is only an administrative role of the Panchayat being entrusted on the elected Ward members.

14. This Court has heard the Learned Counsel on either side and noted their submissions.

15. The Petitioner has sought for removal of encroachments by Respondents 1 to 6 in S.No.292, Thankuppam Village, measuring an extent of 7.50 acres and also he had specified the extent and more particularly the Survey Numbers in the Writ Petition and this Court is not repeating the same. He had given a complaint on 17.07.2015 along with area people with a view to take immediate action against the 7th Respondent and to remove him immediately from the Presidentship and to recover the land from all the encroachers.

16. It transpires that the 7th Respondent herein, as petitioner (in his individual capacity) had filed W.P.No.40795 of 2016 before this Court against (i) the District Collector, Kancheepuram District (ii) the Block Development Officer, Thiruporur Union, Kancheepuram and (iii) the Assistant Director (Panchayats), Kancheepuram, seeking for necessary direction being issued to the Respondents to consider his Representation

dated 02.08.2016 seeking permission to desilt and remove the encroachments in water bodies comprised in S.Nos.23 and 52 of Kelambakkam Village and also for construction of Banks in the said water bodies. This Court, by an order dated 21.11.2016, disposed of the said Writ Petition by directing the 2nd Respondent/Block Development Officer, Thiruporur Union, Kancheepuram to look into the representation of the Petitioner, dated 02.08.2016 and to carry out the inspection of site within 15 days from the date of receipt of a copy of the order and in case, encroachment is detected, to pass necessary orders within two months, thereafter, after notice to all concerned and encroachment if any, be removed within the same period of time.

17. The Tashildar, in his counter, had specifically mentioned that the encroachments in question are yet to be removed and the same will be removed after clear measurements are made with the assistance of Field Surveyor and also after finding out the actual extent of encroachment and in this regard, necessary procedures will be followed to evict them in a proper manner, of course, after adhering to the Guidelines/Rules/Regulations prescribed thereto in terms of the relevant Government Orders.

18. Considering the fact that the 5th Respondent has only prayed for time to remove the encroachments in question and also on behalf of Respondents 1 to 6, reasonable time is sought for to remove the encroachments in the Government Poramboke land at Pudupakkam and Kelambakkam, more particularly referred to in the Government Poramboke areas mentioned in the Writ Petition, this Court, without traversing upon the merits and contents of the matter, at this stage, simply directs the Respondents 1 to 6 to look into the complaint of the Petitioner and others, dated 17.07.2015, within a period of two weeks from the date of receipt of a copy of this order. If the Respondents 1 to 6 find any substance in the complaint of the Petitioner and others, dated 17.07.2015, then, without any haziness or hesitation, they are directed to take immediate action with regard to the removal of encroachments in S.No.292, Thankuppam Village, of an extent of 7.50 acres, Thazhangal Lake Survey Nos.43, 44, 45, 46, 47 and Vannan Lake Survey No.304, Sattankadu Survey No.306/4 extent 1.50 acres, 316/12, Kalam Poramboke Land Survey No.307/9 extent of 0.20 cents, Survey No.187/3 - extent 3 acres, K.S.S.Nagar Poramboke Survey No.162/A, Survey No.4, Survey No.103 extent of 1.25 acres, Jayalakshmi Nagar Survey No.81-extent of 51 cents, Sakkli Kuttai, Parachai Kuttai Survey No.128, Survey No.107, etc., on or before 10.06.2018 and submit a complete and comprehensive Report viz. Status Report before this Court on 02.07.2018.

The Writ Petition is disposed of with the above directions and observations. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

(aeb)
To:

1. The District Collector,
Office of the Kancheepuram
District Collector,
Kancheepuram.
2. The Kancheepuram District
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