

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2018

CORAM

THE HONOURABLE Mr.JUSTICE M.SATHYANARAYANAN, J
&
THE HONOURABLE Mr.JUSTICE G.K.ILANTHIRAIYAN, J

W.P.No.14988 2018
and
W.M.P.No.17752 of 2018

1.S.L.Palanisamy
2.S.L.Subramani ... Petitioners

Vs.

1.The District Collector
District Collector Erode
Erode
2.The Deputy Collector
Rural Development (Panchayat) Officer
Erode District
3.The Block Development Officer
Block Development Officer
Bhavani, Erode
4.The Deputy Director
District Land Survey Department
Erode
5.The Revenue Tahsildar
Revenue Tahsildhar Bhavani
Bhavani, Erode ... Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus directing the 1st respondent herein to consider the representation dated 22.05.2018.

For Petitioner : Mr.V.Balamurugane
For Respondents : M.A.N.Thambidurai
Special Government Pleader

O R D E R

By consent, the writ petition itself is taken up for final disposal.

2. Mr.A.N.Thambidurai, learned Special Government Pleader accepts notice on behalf of the respondents.

3.The petitioners claim that they own a land in S.No.505/1, 505/3 and 506/3 admeasuring to an extent of 2.16 acres at Periyapuliyur Village, Bhavani Taluk, Erode District and it was purchased through a registered sale deed bearing Document No.1633 of 1996 dated 11.07.1996 and they claim to be in possession and enjoyment of the same. The petitioners would aver that for the purpose of laying the road, a portion of the land owned by the petitioners in 505/1 has been utilized and he has been permitted to put up a superstructure on a land measuring 600 sq.ft in lieu of his patta land. The petitioners would further aver that one Senthil kumar has filed W.P.No.19403 of 2017 praying for issuance of a writ of mandamus directing the first respondent herein to implement the orders made in Na.Ka.12933/2017/Oo2 dated 12.05.2017 as well as the order of the Sub-Collector dated 05.05.2017 in Na.Ka.No.6/2017/A1 and to take appropriate action and the matter came to be disposed of at the admission stage itself by directing third respondent to act on the communication of the 1st respondent in Memo dated 12.05.2017 after putting the petitioner herein, who were arrayed as respondents 4 and 5 therein, on notice and to pass appropriate orders on merits and in accordance with law. Accordingly, the petitioners were issued with notice under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 on 08.01.2018. The petitioners, in response to the same, have submitted a representation dated 26.05.2018 pointing out the said fact and also stated that since the portion of the petitioners' patta land were taken over for laying the public road, the land said to be encroached by the petitioners may be assigned to them or in the alternative, the portion of the land, which is being used as a road in S.No.505/1, shall be handed over to them and despite receipt and acknowledgement, no orders have been passed.

4. Mr.Balamurugane, learned counsel appearing for the petitioner would submit that despite the pendency of the representation, attempts are being made to remove the encroachment on the part of the petitioners. Therefore, the petitioners have come forward with this writ petition seeking limited prayer for the disposal of their representation.

5. Per contra, Mr.A.N.Thambidurai, learned Special Government Pleader, appearing for the respondents submitted that admittedly

the petitioners are encroachers on the public road and only following the due process of law, action is being taken.

6. This Court heard the rival submissions and also perused the materials placed before it.

7. A perusal of the materials placed before this Court indicate that measurements of the land in question in S.No. 505/1, 505/3 and 506/3 have been done in the presence of the petitioner and as if the petitioners cannot express any grievance. The only point urged by the learned counsel for the petitioners is that since the road has been laid on a portion of his patta land in S.No.505/1, he has encroached upon the adjacent land in S.No.505/2 and either the portion of their land used for laying the road may be given to them or the portion of the land encroached upon by them can be assigned to them

8. Considering the rival submissions, this Court, without going into the merits of the claim projected by them either in the representation or in this writ petition, directs the third respondent to consider and dispose of the petitioners' representation dated 26.05.2018 on merits and in accordance with law and pass orders within a period of six weeks from the date of receipt of a copy of this order and till such time, the respondents shall defer decision to remove the encroachment caused by the petitioner in S.No.505/2 of Periyapuliyur Village, Bhavani Taluk, Erode District.

9. It also appears from the photographs that the petitioner had also put up superstructure and it is also open to the third respondent to cause inspection as to whether the superstructure put up by the petitioner is authorized or unauthorized, after putting the petitioners on notice and depending upon the result of the inspection, the third respondent shall take appropriate action in accordance with law, as expeditiously as possible. It is made clear that the petitioner, till the disposal of the representation by the third respondent, shall not create any third part right in respect of the land and superstructure in question and shall not alter the physical features also.

The writ petition is disposed of with the above direction. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1.The District Collector
District Collector Erode
Erode

2.The Deputy Collector
Rural Development (Panchayat) Officer
Erode District

3.The Block Development Officer
Block Development Officer
Bhavani, Erode

4.The Deputy Director
District Land Survey Department
Erode

5.The Revenue Tahsildar
Revenue Tahsildhar Bhavani
Bhavani, Erode

+2cc to Mr.P.Muthu Kumaarasaamy, Advocate, S.R.No.

+1cc to the Government Pleader, S.R.No.41464

W.P.No.14988 of 2018 and
W.M.P.No.17752 of 2018

RJ (CO)
GSP (06/07/2018)



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