

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :01.11.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.1795 of 2014
and
M.P.Nos.1 & 2 of 2014
and
W.M.P.No.24854 of 2017

V.P.Jayakumar

..Petitioner

vs

1.The District Revenue Officer,
Coimbatore.

2.The Revenue Divisional Officer,
Coimbatore.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the first respondent to consider and rectify the error crept in the UDR anomaly by incorporating as "irrigation channel", after replacing the word "foot path" in respect of S.Nos.764/11, 764/12 & 764/13 of Vellalur Village, Coimbatore South Taluk, in the light of the G.O.Ms.No:385, Revenue(General) Department, dated 17.08.2004, pursuant to the representation sent by the petitioner herein dated 10.04.2013, 04.09.2013 and 23.12.2013 on merits and in accordance with law.

For Petitioner : Mr.N.Anand

For Respondents : Mr.R.S.Selvam, GA for R1 & R2

O R D E R

The relief sought for in this writ petition is for a direction to direct the first respondent to consider and rectify the error crept in the UDR anomaly by incorporating as "irrigation channel", after replacing the word "foot path" in respect of S.Nos.764/11, 764/12 & 764/13 of Vellalur Village, Coimbatore South Taluk, in the light of the G.O.Ms.No:385, Revenue(General) Department, dated 17.08.2004, pursuant to the representation sent by the petitioner herein dated 10.04.2013, 04.09.2013 and 23.12.2013.

2.The leaned counsel for the writ petitioner forcibly contended that the "irrigation channel" is under encroachment and the agriculturists in that particular locality is unable to utilize the water channel for the purpose of irrigation as the same is under encroachment by few greedy men.

3.The petitioner states that the wet land comprised in S.No.764/C, S.No.766/A and 767/A of Vellalur Village, Coimbatore South Taluk, originally belonged to Ramasamy Chettiar, son of Mukkan Chettiyar, who in turn had sold the said property by way of a sale deed dated 18.05.1913 and registered as a Document in Doc.No.3648/1913 on the file of the Joint Sub-Registrar II, Coimbatore to and in favour of Saminatha Chettiyar, son of Chettiyappa Chettiar. Accordingly, the said Mr.Saminatha Chettiyar and his legal heirs have been continuously in possession and enjoyment of the said land by raising crops and by paying kist/tax regularly till date, including the wet lands comprised in S.Nos.764/6 and 765, which also the petitioner and his family members have inherited from their ancestors. It is relevant to note that the Survey Numbers S.No.764/C, S.No.766/A and 767/A of Vellalur Village has been reclassified as S.Nos:764/5, 766 and 767 of Vellalur Village during Re-Survey and Re-Settlement in the year 1913.

4.The petitioner also states that adjacent to their lands is a channel poromboke which is situated in S.Nos.764/11, 764/12 and 764/13 of the same village and in the re-survey and re-settlement records of the year 1913, it was classified as Drainage(VARI). The said "irrigation Channel" has been in existence in the aforesaid survey numbers even before 1913 and hence it has been correctly classified in the re-survey and re-settlement records.

5.The grievances of the writ petitioner is that while updating Register(UDR records), the said Survey Nos.764/11, 764/12 and 764/13 were wrongly classified as "foot path" without any notice to the adjacent to the land owners by the revenue authorities inadvertently and without field verification. The petitioner states that on account of such wrong classification, the petitioner as well as the other agriculturists of that locality suffered and they are unable to utilize the water channel for the purpose of irrigation.

6.The learned counsel for the writ petitioner further states that on the northern side, there is a Temple and they have also encroached the portion of the Government land and they are also to be evicted under the provisions of the Tamil Nadu Land Encroachment Act, 1905.

7. At the outset, the learned counsel for the petitioner is of an opinion that the water channel provided in that locality is to be made available for the usage of all the agriculturists of that locality for continuing their irrigation. Contrarily, there are many encroachments and even the Temple in that locality has encroached the Government land.

8. This Court is of an opinion that the encroachment is an evil and this Court cannot tolerate the encroachments of public lands by any person. The concept of social evil of encroachment may not know the colour and caste. However, such an evil is detrimental to the development of the society and for the welfare of the society at large. Thus, the concept of encroachment can never be permitted based on the other criterias. All the public lands are to be utilized for the public welfare and in the interest of public administration. Undoubtedly, the Government got powers to allot the Government lands in favour of the persons only if the Government considers that it is necessary for the public interest and for the welfare of the public at large.

9. It is needless to state that even the Government lands can be assigned and allotted in favour of Temple, Church, Mosque and other Religious institutions. The Government is empowered to allot or assign lands to the Religious institutions. But the Government has to take into consideration, whether such lands are to be utilized for agricultural purposes or for any other usage of the public at large in that locality. Thus, the larger interest is to be considered before allotting or assigning such public lands in favour of any individual persons.

10. It is brought to the notice of this Court that the very same writ petitioner earlier filed W.P.No.6193/2014 and it was not brought to the notice of this Court that the present writ petition in W.P.No.1795 of 2014 was pending at the time of hearing of the earlier writ petition filed in W.P.No.6193/2014. Whether it happened inadvertently or at the instance of the writ petitioner, is not explained before this Court.

11. The learned counsel for the writ petitioner states that since the another learned counsel appeared in W.P.No.6193/2014, argued the matter and the present writ petition was not tagged along with the earlier writ petition. However, neither the petitioner nor the respondents brought to the notice of this Court.

12. May that it be. This Court is of an opinion that large number of encroachments are noticed in that locality in respect of the public lands. The officials, who appeared before this Court, during the relevant point of time, also submitted the

field report in this regard. More specifically, the Tahsildar, Madukkarai Taluk, Coimbatore District filed the report, setting out certain factual details on field verification. The survey itself was conducted with the assistance of the Assistant Director of Survey and Land records and all those factors were placed and this Court passed a detailed order in W.P.No.6193/2014 dated 08.10.2018 and the relevant portions of the order is extracted hereunder:

"23.The learned Special Government Pleader with reference to the report filed by the Tahsildar, Madukkarai Taluk, Coimbatore District contended that the writ petitioner is an encroacher and he is attempting to influence the authorities and other persons with the assistance of his Uncle, who is a retired I.A.S., officer. In such circumstances, this Court has to permit the revenue officials to remove all such encroachments and utilize the land for public purposes. The report submitted by the Tahsildar, Madukkarai Taluk, Coimbatore District is extracted hereunder:

"I am working as Tahsildar, Madukkarai and as such I am acquainted fully with the facts of the case.

Pursuant to the orders issued by the Honourable High Court, Chennai in W.P.No.6193 of 2014 and M.P.No.1 of 2014 on 17.09.2018, the Poramboke lands in and around the lands held by the Writ petitioner Thiru.V.P.Jayakumar was surveyed on 25.9.2018 with the assistance of Assistant Director of Survey and Land Records, Coimbatore.

During the survey Writ Petitioner Thiru.V.P.Jayakumar and respondent 4 were also Present. The following is the status of lands as per ground

S.N o.	Survey No	Extent (in acres)	Whether encroached or not	Extent of encroachment (in acres)	Nature of encroachment
1	764/5	0.42	Encroached by Writ Petitioners	0.42	The land is maintained as tharisu and thorny bushes are there. One coconut tree is there

2	764/7	0.36	Encroached by Writ Petitioner	0.36	The land is maintained as tharису and throny bushes are there. One coconut tree, five arecanut trees and one seedling of coconut tree are there
3	764/1 1	0.57	Encroached by the writ petitioner Partially	0.48	Nearly 9 cents are used by public as pathway and rest of the land 48 cents are under the possession of the Writ Petitioner. There are Throny bushes
4	764/2	0.02 ½	Encroached by the Writ Petitioner	0.02 ½	Being used as pathway. Throny bushes are there
5	764/1 3	0.05	Encroached by the Writ Petitioner	0.05	Being used as path way. Throny bushes are there

24.The encroachments marked in the sketch also categorically establishes that the Government lands are under encroachment.

25.The sketch produced by the Tahsildar clarifies that the Government lands are classified as 'Tharису', 'Poramboke' and 'Pathway' are also under encroachment.

This being the field report submitted by the Tahsildar, this Court has no hesitation in coming to the conclusion, that the persons, who have encroached the Government land are certainly liable to be evicted under the provisions of the Tamil Nadu Land Encroachment Act, 1905. Encroachment is however menace and few greedy men are encroaching the Government land for the purpose of their personal gains and for unlawful enrichment. Such greedy men are adopting all illegal methods to protect such encroachment in an illegal manner. The encroachments of Government land in our State are considerably increasing on account of the mounting of the land cost. As the land cost increases, the encroachments are also increasing. There is no end for greediness. However, such greedy men, who have encroached the Government lands are to be dealt in accordance with law and there cannot be any leniency or misplaced sympathy in this regard.

26. The Government lands are meant for the public usage. Government lands or water bodies are to be protected in the interests of public. It is duty mandatory on the part of the State to protect the Government lands for the purpose of implementing the welfare schemes. Protection of the Government lands, water bodies and water resources are the constitutional mandates and the State is bound to implement the same. Thus, the State authorities must be held responsible for all such encroachments and the authorities must be personally made liable and accountable in the event of allowing such encroachments and not initiating steps to evict such encroachments.

27. This Court is able to visualize that a Tahsildar or his subordinates or the higher officials in the District Administration are very well aware of all such encroachments. Day-in and Day-out, such field officers are passing through all such encroachments in Government land and water bodies. The local Village Administrative Officers and other revenue officials are very much aware of all these encroachments. In spite of their clear knowledge about such encroachments, why actions are not taken under the law, is the important question to be raised by all concerned in the interests of public. The reasons can be many, possibly such Government lands are shown by these revenue officials to some greedy men, who are capable of satisfying the needs of such Government officials. Such encroachments

are permitted by the revenue officials on account of corruption.

28.The encroachments are permitted by such local officials on certain political influences and at the influence of some higher officials.

29.This Court is of an opinion that a common man, in all circumstances may not know, what all are the lands, classified as Poramboke lands, water bodies, water resources in the revenue records. Thus, the revenue details are made available in the office of the District Administration and Taluk Offices. Thus, without the assistance of some officials or the subordinates working in the District Administration or Taluk Offices, it may not be possible for such greedy men to encroach with confidence. Such encroachments are done and the people are continuing the encroachment with full confidence that nobody can touch them. Who gave such a strength to these encroachers, who all are none other than the offenders. Encroachers being offenders when not dealt in accordance with law, is detrimental to the public as well as the public administration.

30.Under these circumstances, this Court is of a considered opinion that all these officials of the District Administration must not only be held responsible, but also to be made accountable in respect of encroachments of Government lands, water bodies and water resources. The inaction of the District Administration, inefficiency of the officials lead to large scale of encroachments in the State. Thus, the Constitutional Courts are bound to take note of the seriousness and deal with such cases, so as to ensure the rule of law in the State by protecting all such Government lands, water bodies and water resources.

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31.It is established before this Court that the writ petitioner is an encroacher. When it is established before this Court that the writ petitioner is an encroacher, then there is no point in sending the matter back once again to the revenue officials. The order passed by the Revenue Divisional Officer dated 04.12.2013, elaborately states that the land in question are classified as "Tharisu", "Pathway", and "Government Poramboke land".

32.This being the factum of the case, this Court is inclined to pass the following orders:

(i) The impugned order passed by the 1st respondent in proceedings dated 21.01.2014 stands confirmed.

(ii) The respondents 1 to 3 are directed to evict the writ petitioner from the Government lands within a period of four weeks from the date of receipt of a copy of this order.

(iii) The Commissioner of Police, Coimbatore, is directed to provide Police Protection for the eviction of the writ petitioner from the Government lands.

(iv) The 1st respondent is directed to conduct an enquiry in respect of the lapses on the part of the revenue officials in protecting the Government lands, water bodies and water resources and initiate appropriate action, if any negligence or dereliction of duty is found.

33.With these directions, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed."

13.It is made clear that if at all, the petitioner claims any title, ownership or possession in respect of any particular land, it is for him to adjudicate the same before the competent Civil Court of law, by producing all his original documents and by adducing evidences. However, those complex facts and circumstances arising on account of title, ownership or possession can never be adjudicated in a writ proceedings under Article 226 of the Constitution of India. Such adjudication required conduct of Trial. Thus, this Court is inclined to made any finding in respect of the claim made by the writ petitioner.

14.The growing trend, more specifically, in urban and sub-urban areas are that people are tempted to encroach the public lands and utilize the lands for their personal gains and for

unlawful enrichment. The public authorities are also colluding in certain circumstances on extraneous considerations and by indulging in corrupt activities. However, all these omissions, commissions of the officials are to be dealt with iron hand and there cannot be any leniency or misplaced sympathy, while dealing with such officials by the competent authorities. All these officials against whom such an allegation are raised, must be dealt with in accordance with the Discipline and appeal Rules.

15.It is made clear that all the encroachments in that particular locality and in the nearby localities are to be evicted by following the procedures as contemplated under the Tamil Nadu Land Encroachment Act, 1905 and the Tamil Nadu Protection of Tank and Eviction of Encroachment Act, 2007. Water bodies and water resources are to be protected. The Hon'ble Supreme Court of India, time and again, reiterated that all encroachments in water bodies and water resources are to be evicted and such resources are to be utilized for the welfare of the people at large in that locality. Thus, the water channel and water bodies and water resources are to be maintained in the manner known to law by the competent authorities.

16.This being the factum of the case, the following orders are passed:

(i) The relief as such sought for in the present writ petition stands rejected.

(ii) The respondents are directed to conduct inspection in respect of the claim made by the writ petitioner in the present writ petition and accordingly, initiate appropriate actions to evict all the encroachers by following the procedures as contemplated under the Tamil Nadu Land Encroachment Act, 1905 and accordingly, protect the Government properties, water bodies and water resources for the usage of the public at large.

(iii) The Commissioner of Police, Coimbatore is directed to provide adequate Police protection for the eviction of all such encroachments from the Government properties, water bodies, and water resources.

17.With these directions, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CCC)

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Sub Assistant Registrar

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To

1.The District Revenue Officer,
Coimbatore.

2.The Revenue Divisional Officer,
Coimbatore.

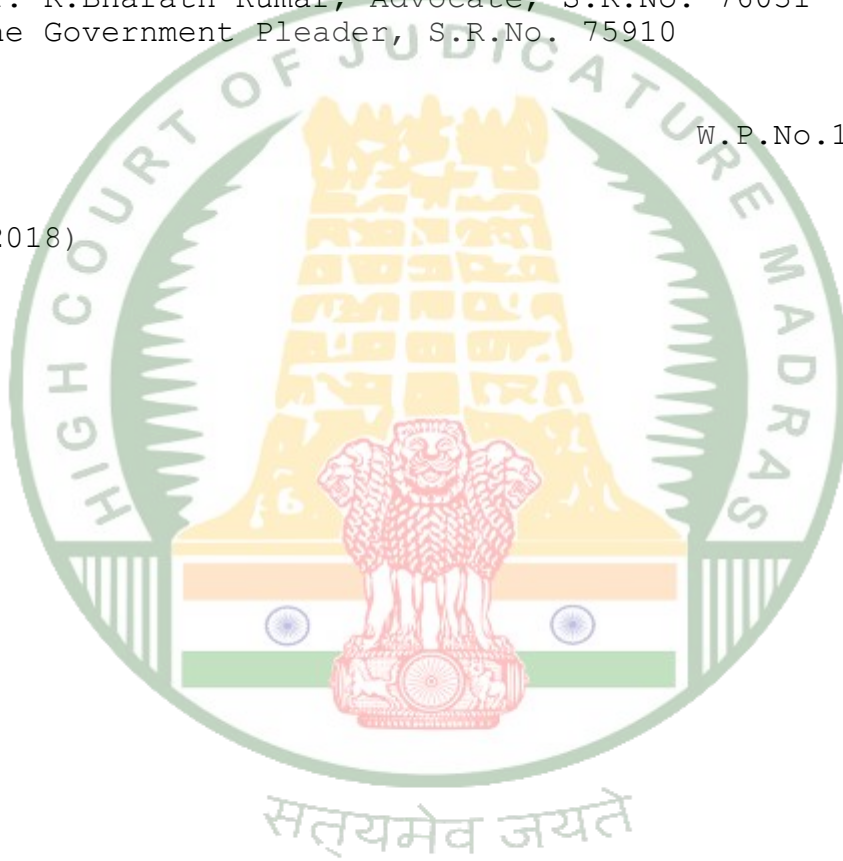
3.The Commissioner of Police,
Coimbatore.

+1cc to Mr. R.Bharath Kumar, Advocate, S.R.No. 76031

+1cc to the Government Pleader, S.R.No. 75910

W.P.No.1795 of 2014

VGI (CO)
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