



WEB COPY

IN THE HIGH COURT OF JUDUCATURE AT MADRAS

Dated: 09.11.2018

Coram:

THE HON'BLE MR.JUTICE M.VENUGOPAL

AND

THE HON'BLE MR.JUSTICE R.PONGIAPPAN

W.P.No.17021 of 2018

Mr.Subash @ Subash Chandran

...Petitioner

vs.

- 1.The Block Development Officer,  
Block Development Office,  
Andipatti,Salem.
- 2.The Executive Officer,  
Block Development Office,  
Salem.
- 3.The Rural Development Officer,  
Majira Kollappatty,  
Block Development Office,  
Salem.
- 4.The Sub-Collector,  
District Collector Office,  
First Agraharam,  
Salem-636 001
- 5.Tamil Nadu Slum Clearance Board,  
Subramaniyapuram Extension,  
Salem Main Road,  
Peramanur,  
Salem-636 007
- 6.Mr.Kannan
- 7.Mrs.Kanagavalli

...Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus directing the respondents 1 to 3 to consider the representation dated 12.05.2018 for removal of the encroachment made by the 6<sup>th</sup> and 7<sup>th</sup> respondents in the common area, which is ear marked as park, open space and common pathway which is adjacent to the Plot No.6, Salaimarathu Vattam, Sivadhapuram Village, Andipatti Salem.



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For Petitioner : Mr.V.Nithyanantham  
For Respondents : Mr.S.N.Parthasarathy,  
Government Advocate  
for R1 to R4  
Mrs.D.Latha for R5

ORDER

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

For R1 to R4, Mr.S.N.Parthasarathy, the learned Government Advocate appears and for R6 and R7, though Court notice has been served on 12.07.2018, yet there is no appearance on their behalf either in person or through their counsels.

2.Heard both sides.

3.According to the Petitioner, he is the absolute owner of the house site property measuring an extent of 43.59 sq.meter i.e. 469 sq.feet, comprised in Survey No.18/2, situated at Plot No.5, Andipatti Sivadhapuram, Sivadhapuram Village, Salem, which was allotted to him and later a Sale Deed was executed by the 5<sup>th</sup> Respondent/The Tamil Nadu Slum Clearance Board (vide Doc. No.1798 of 2006, on the file of the Sub-Registrar Office, Suramangalam).

4.The stand of the Petitioner is that the 6<sup>th</sup> and 7<sup>th</sup> Respondents had jointly acquired a property measuring an extent of 44.97 sq. meter i.e. 484 sq.feet, comprised in Survey No.18/2, situated at Plot No.6, Andipatti Sivadhapuram, Sivadhapuram Village, Salem, by means of a Registered Sale Deed, dated 31.12.2008, on the file of the Sub-Registrar Office, Suramangalam. Further, the Petitioner had averred in his Writ Petition that the 6<sup>th</sup> and 7<sup>th</sup> Respondents are encroaching the O.S.R. which was originally allotted for park, open area and common pathway as well as his portion of the property. The 5<sup>th</sup> Respondent had allotted the plots to individual persons under the 'Economically Weaker Section Category'. R1 to R4 are the proper authorities to remove the unauthorised construction.

5.The Petitioner in his Writ Petition proceeds to point out that the 5<sup>th</sup> Respondent/The Tamil Nadu Slum Clearance Board passed a Resolution on 26.11.1998 and issued a Circular bearing No.13317/97 E5, dated 18.12.97, authorising the Executive Engineer to sub-divide the property and execute the Sale Deeds as per the allotment under 'Economically Weaker Section Category'. Accordingly, an open space, road and pathway were provided as 'ingress and egress' to the property, provided by the 5<sup>th</sup> Respondent herein, sub-divided as house sites and one of the Plots, viz., Plot No.5 was allotted to him. The 6<sup>th</sup> and 7<sup>th</sup>



Respondents had acquired Plot No.6 by means of allotment from the 5<sup>th</sup> Respondent/Tamil Nadu Slum Clearance Board and they are entitled to put up construction only in the said Plot situated at No.6, Sivadhapuram Village, Andipatti Post, Salem. Per contra they are encroaching the entire space, which was originally allotted to the pathway, which is adjacent to his Plot No.6, and putting up additional construction. Further he is slowly endeavoring to swallow the entire common area to the layout. That apart, an attempt is made to close the pathway to the Petitioner's property by means of encroachment. Moreover, the 6<sup>th</sup> and 7<sup>th</sup> Respondents are putting up the construction in the common area, which is originally left out as open space and pathway by the 5<sup>th</sup> Respondent. The Respondent Nos.1 to 3, as Enforcement Authorities, are entitled to remove the encroachment and as such, they ought to inspect the property, conduct an enquiry with a view to take appropriate action in stopping and removing the unauthorised construction put up in the common area encroached by the 6<sup>th</sup> and 7<sup>th</sup> Respondents.

6.The 4<sup>th</sup> Respondent, being in-charge for R1 to R3, is responsible for non-compliance of performance of duty by R1 to R3 and as such, a necessary direction may be issued by this Court in directing the Respondents 1 to 3 to take appropriate action against the 6<sup>th</sup> and 7<sup>th</sup> Respondents to stop and remove the unauthorised construction in the common area, in accordance with Law.

7.It appears that the Petitioner had submitted a Representation to the Respondents dated 12.05.2018 with a request to take appropriate steps against R6 and R7 in stopping and removing the unauthorised construction in the common area. Since no action has been taken by the concerned authorities, the Petitioner had filed the present Writ Petition to consider his Representation dated 12.05.2018 in question.

8.It is represented on behalf of the Respondents 1 to 4 that the Assistant Engineer (RD), Salem Block, Salem District, had inspected the building construction made by the 6<sup>th</sup> and 7<sup>th</sup> Respondents in Plot No.6 in Andipatti Sivadhapuram Village, Salem Block, Salem District, on 18.09.2018 and reported that the 6<sup>th</sup> and 7<sup>th</sup> Respondents had constructed a building measuring an extent of 712 sq.feet (instead of 484 sq.feet) as found in the Registered document. The said construction made by the 6<sup>th</sup> and 7<sup>th</sup> Respondents in Plot No.6 in Andipatti Sivadhapuram Village, Salem Block, Salem District, is found to be an encroachment and added further the 5<sup>th</sup> Respondent/Tamil Nadu Slum Clearance Board has come out with a categorical assertion before this Court that the additional construction made by the 6<sup>th</sup> and 7<sup>th</sup> Respondents in the open space area, which caused public hindrance for the livelihood of the public, is an unauthorised and unlawful one.



9.The Representation of the Petitioner, dated 12.05.2015, was not addressed to the Tamil Nadu Slum Clearance Board and as such, the Petitioner has not sought any specific relief against the 5<sup>th</sup> Respondent/Tamil Nadu Slum Clearance Board and viewed in that perspective, the Writ Petition is liable to be dismissed as against the 5<sup>th</sup> Respondent/Tamil Nadu Slum Clearance Board.

10.It is to be noted that the 5<sup>th</sup> Respondent/Tamil Nadu Slum Clearance Board, in the counter at Paragraph No.4, had clearly averred that as per the layout, there is an open space adjacent to Plot No.6, which was encroached by the 6<sup>th</sup> Respondent, by constructing pacca building in open space. In fact, Plot No.6 of Andipatti Sivadhapuram Village, Salem Block, Salem District (TNUDP SCHEME) measuring an extent of 484 sq.ft., comprised in Survey No.18/2, was allotted to the 6<sup>th</sup> Respondent (Kannan, Son of Elumalai and Kanagavalli) and further that the Registered Sale Deed was issued in their favour, dated 31.12.2008.

11.In view of the fact that the 6<sup>th</sup> and 7<sup>th</sup> Respondents had put up construction in Plot No.6, in Andipatti Sivadhapuram Village, Salem Taluk, Salem District and they had put up a construction, viz., the building measuring an extent of 712 sq.feet (instead of 484 sq.feet), as found in the Registered Sale deed, they had committed an encroachment and the said unauthorised construction is liable to be removed by the Respondents 1 to 3 and in this regard, this Court directs the Respondents 1 to 3 to remove the 'unauthorised construction' put up by R6 and R7 in the aforesaid Plot No.6, Andipatti Sivadhapuram Village, Salem Block, Salem District, within a period of two weeks from the date of receipt of copy of this order and to restore the property to its original position, thereby avoiding an inconvenience and hardship not only to the Petitioner, but also to the other residents and other Plot owners. Soon after removal of the encroachment made by R6 and R7, in Plot No.6, Andipatti Sivadhapuram Village, Salem Block, Salem District, the first Respondent is directed to send a 'compliance report', by addressing a communication to the Registrar (Judicial) of this Court, without fail.

With the above observations/directions, the Writ Petition shall stand disposed of. No costs. Connected Miscellaneous Petition is closed.

Sd/-  
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

msh



To

1.The Registrar(Judicial)  
High Court, Madras.

For favour of information and necessary follow up action.

2.The Block Development Officer,  
Block Development Office,  
Andipatti,  
Salem.

3.The Executive Officer,  
Block Development Office,  
Salem.

4.The Rural Development Officer,  
Majira Kollappatty,  
Block Development Office,  
Salem.

5.The Sub-Collector,  
District Collector Office,  
First Agraharam,  
Salem-636 001

6.Tamil Nadu Slum Clearance Board,  
Subramaniyapuram Extension,  
Salem Main Road,  
Peramanur,  
Salem-636 007

+1cc to Mr.D.Latha, Advocate, S.R.No.76713

+1cc to the Government Pleader, S.R.No.77034

W.P.No.17021 of 2018

NRI (CO)

rrs 03/12/2018