



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED 23.02.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND

THE HONOURABLE MRS.JUSTICE R.THARANI

W.P. (MD) .Nos.1294 to 1302 of 2018

and

W.M.P. (MD) .Nos1351 to 1359 of 2018

1. Noorjahan	...	Petitioner	in W.P. (MD) .No.1294 of 2018
2. Nesamoni	...	Petitioner	in W.P. (MD) .No.1295 of 2018
3. Jeganathan	...	Petitioner	in W.P. (MD) .No.1296 of 2018
4. Santhi	...	Petitioner	in W.P. (MD) .No.1297 of 2018
5. Saroja	...	Petitioner	in W.P. (MD) .No.1298 of 2018
6. Sisil	...	Petitioner	in W.P. (MD) .No.1299 of 2018
7. Sugumaran	...	Petitioner	in W.P. (MD) .No.1300 of 2018
8. Ramesh	...	Petitioner	in W.P. (MD) .No.1301 of 2018
9. Star Jeyalat	...	Petitioner	in W.P. (MD) .No.1302 of 2018

Vs.

1. The District Collector,
Kanyakumari District at
Nagercoil Post.

2. The Tahsildar,
Vilavancode Taluk,
Kuzhithurai,
Kanyakumari District.

3. The Commissioner,
Kuzhithurai Municipality,
Marthandam Post,
Kanyakumari District. ... Respondents in

W.P. (MD) .Nos.1294 to 1302 of 2018

PRAYER: Writ Petitions are filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records of the impugned order passed by the 3rd respondent herein in his proceedings in Na.Ka.No. 1841/2017/Na.A.AA dated 04.01.2018 (removal of encroachment) as far as Petitions are concerned in T.S.No.D9/74, Kuzhithurai Municipality which is within Kuzhithurai Town Village (formerly within Nalloor Village), Vilavancode Taluk, Kanyakumari District and quash the same as illegal and without jurisdiction.

For Petitioner : Mr.V.Meenakshisundaram

For R1 & R2

: Mr.D.Muruganantham

Addl. Government Pleader

For R3

: Mr.K.Vamanan

**COMMON ORDER**

[Order of the Court was delivered by **T.S.SIVAGNANAM, J.**]

Heard Mr.V.Meenakshisundaram, learned counsel appearing for the petitioner, Mr.D.Muruganantham, learned Additional Government Pleader appearing for the respondents 1 and 2 and Mr.K.Vamanan, learned counsel appearing for the third respondent.

2.The prayer sought for in these writ petitions are identical, as the petitioners have challenged the notice issued by the third respondent, dated 04.01.2018, directing the petitioners to vacate and clear the encroachments in Survey No.D9/74, Kuzhithurai Municipality, in terms of the direction issued in W.P.(MD). No.12821 of 2017 dated, 12.07.2017. The impugned notice refers to the proceedings of the second respondent, dated 04.01.2018, by the said proceedings, 'B' memo issued in favour of the petitioners have been cancelled. The petitioners challenged the impugned proceedings on the ground that it is in violation of the principle of natural justice and without considering the factual position, action has been initiated. It is further contended that the petitioners have not received any notice before cancelling the 'B' memo granted to them and such cancellation order was not at all communicated to them. It is further submitted that all the petitioners owned patta lands abutting NH-47 and the lands comprised in Survey No.D9/74, lies behind the stretch of abandoned poromboke lands and they are not utilized and the said Government poromboke land in which, the petitioners have put up small constructions, car shed, expansion of their house, bathroom etc., and the possession was recognized by the second respondent and they were granted 'B' memo. All of a sudden, because of a public interest litigation filed by a third party, who is also a resident of the same area, without impleading the petitioners, the present action has been initiated and therefore, the same requires to be set aside.

3.The learned counsel appearing for the respondents 1 and 2 submitted that if 'B' memo has been cancelled then the petitioner has no right to squat on the property and the Revenue Department are entitled to resume the property.

4.The learned Standing counsel appearing for the third respondent Municipality would submit that the property does not fall within the control of the Municipality, but because of the Court order, in which, the third respondent Municipality was suo-motu impleaded at the admission stage and the writ petition was disposed of, the third respondent Municipality was compelled to issue the impugned notice.



5. We have heard the learned counsel for the parties and also considering the materials placed on record.

6. We find that by virtue of the impugned proceedings, no action can be taken for removal of encroachment. In fact, the impugned proceedings is a road block for action to be initiated. If the petitioners have been issued 'B' memo in respect of the lands in question, they are admittedly encroachers of Government land, the petitioners possession was recognized by the Revenue Department with condition that they shall vacate and hand over possession to the Revenue Department as and when required.

7. Thus the petitioners cannot acquire title of the lands. Thus, we are of the view that to resolve the entire controversy and to ascertain the nature and extent of encroachment, survey is required to be conducted of the area in question.

8. The learned counsel for the petitioners, on instructions, submitted that the lands in question are not utilized by the Government and the petitioners have requested the authorities to permit them to purchase the extent of the land or to assign/lease the land to them as they have put up small constructions. We do not wish to express anything on this request, it is for the petitioners to pursue the same before the competent authority.

9. In the light of the above, the impugned notice requires to be set aside since the third respondent cannot exercise jurisdiction over the land in question, as admittedly the land vests with the Revenue Department. Therefore, while setting aside the impugned order, we direct the second respondent to conduct a survey of the area within a period of two weeks from the date of receipt of a copy of this order. Since the petitioners were all heard, no individual notice is required before conduct of survey, however date and time of survey of the land can be intimated and the in the presence of the petitioners, the survey shall be completed and based on the survey report, appropriate action shall be taken by the competent authority, within a period of three weeks thereafter.

10. With the above directions, the writ petitions are disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar



2. The Tahsildar,
Vilavancode Taluk,
Kuzhithurai,
Kanyakumari District.

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3. The Commissioner,
Kuzhithurai Municipality,
Marthandam Post,
Kanyakumari District.

+1cc to Mr.K.Vamanan, Advocate Sr.No.50972
+1cc to Spl.Government Pleader Sr.No.51293
+1cc to Mr.D.Nallathambi, Advocate Sr.No.51073

NS

VB/KKR/SAR3/10.04.2018/4P/7C

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