



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

W.P. (MD) No.2644 of 2018

and

W.M.P. (MD) No.2831 to 2833 of 2018

Jamila

... Petitioner

-vs-

1. The District Collector,
Tirunelveli District,
Tirunelveli.
2. The Revenue Divisional Officer,
Cheranmahadevi,
Tirunelveli District.
3. The Tahsildar,
Radhapuram Taluk,
Radhapuram,
Tirunelveli District.
4. The Revenue Inspector,
Levinchipuram Firka,
Radhapuram Taluk,
Tirunelveli District.
5. The Head Surveyor,
Radhapuram Taluk,
Radhapuram,
Tirunelveli District.
6. The Sub Inspector of Police,
Pazhavor Police Station,
Pazhavor, Tirunelveli District.
7. Malar

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the 3rd respondent in his proceedings bearing Na.Ka.Aa8/11178/2017 dated 18.01.2018 and quash the same as illegal and unconstitutional, consequently forbearing the respondents No.1 to 4 from demolishing the compound wall attached with petitioner's house in Plot No.35 which comprised in Survey Nos.360, 361, 379, 380 at Tsunami Colony, Kottappuli, Levinchipuram Village, Radhapuram Taluk, Tirunelveli District without following due process of law.



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For Petitioner : Mr.S.Balamurugan

For Respondents : Mr.S.Dhayalan,
Government Advocate for RR1 to 6
Mr.S.R.Anbarasu for R7

O R D E R

(Order of the Court was made by T.S.SIVAGNANAM, J.)

This writ petition has been filed praying for issuance of a writ of Mandamus, to quash the proceedings issued by the third respondent, which directs the petitioner to remove the encroachment on or before 30.01.2018, failing which action will be initiated to remove the same on 31.01.2018.

2.The petitioner among other things would contend that the action has been initiated by the third respondent based on a writ petition filed by the seventh respondent in W.P.(MD) No.5345 of 2015, which was disposed of by a order dated 19.10.2016. The order reads as follows:

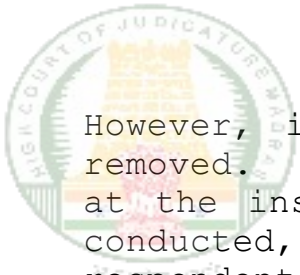
"The petitioner has come up with this public interest litigation seeking a direction to remove the encroachments allegedly made in all the common sites at Kuttapuli Tsunami Colony, Radhapuram Taluk, Tirunelveli District, by considering the petitioner's representation dated 19.03.2015.

2.It is submitted by the learned Special Government Pleader, on instructions from the respondents, that after conducting proper survey, if it is found that there is any encroachments, the same would be removed by following the procedures established by law. The said statement is recorded.

3.In view of the said submissions made, the writ petition is closed binding the parties by the said undertaking. No costs."

3.In the above referred order, the Court had recorded the instructions given by the official respondent to the learned Special Government Pleader that after conducting proper survey, if it is found that there is encroachments, the same would be removed by following proper procedures established by law and recording the submission, the writ petition was closed binding the parties to the said undertaking.

4.The grievance of the petitioner is that without conducting any survey, the impugned notice has been issued. To that extent, we are inclined to accept the submission of the petitioner.



However, if there is an encroachment, it has to be immediately removed. In any event, this Court, in the earlier writ petition at the instance of the seventh respondent directed survey to be conducted, which was based on an undertaking given by the third respondent. They have to abide by the undertaking.

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5. For the above reason, the impugned order is directed to be kept abeyance and the third respondent is directed to measure the property in question and the adjoining areas to ascertain, if there is any encroachment and the measurement of the property should be in the presence of the petitioner and the seventh respondent and after which, a notice should be issued to the petitioner, if there is encroachment and the petitioner may be granted 15 days time to fill their objection. On considering the objections, the third respondent is directed to pass necessary orders on merits and in accordance with law, within a period of two weeks thereafter. Till then, statusquo, which is prevailing as on today shall be maintained.

6. With the above observation, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

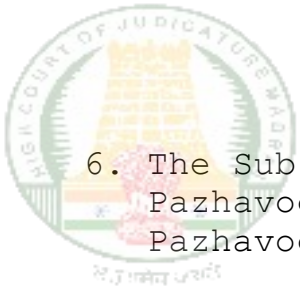
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
Tirunelveli District,
Tirunelveli.
2. The Revenue Divisional Officer,
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Tirunelveli District.
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Radhapuram Taluk,
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5. The Head Surveyor,
Radhapuram Taluk,
Radhapuram,
Tirunelveli District.



6. The Sub Inspector of Police,
Pazhavor Police Station,
Pazhavor, Tirunelveli District.

+1cc to Mr.S.R.Anbarasu, Advocate Sr.No.53377
+1cc to Spl.Government Pleader Sr.No.53347
+1cc to Mr.S.Balamurugan, Advocate Sr.No.53269

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VB/KK/SAR3/16/03/2018/4P/10C

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W.M.P. (MD) No.2831 to 2833 of 2018
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