



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.03.2018

CORAM:

WEB COPY

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE Mrs.JUSTICE R.THARANI

Writ Petition (MD).No.276 of 2018

V.Marimuthu

... Petitioner

Vs.

1. The District Collector,
Virudhunagar District,
Virudhunagar.
2. The Tahsildar,
Sivakasi,
Virudhunagar District.
3. The Block Development Officer,
Sivakasi Panchayat Union,
Virudhunagar District.
- 4.Pandiyarajan
- 5.Packiyalakshmi

... Respondents

Prayer: Writ Petition is filed under Article 226 of Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondents 1 to 3 to remove the encroachment (erecting Tin Shed) made in public pathway by the 4th and the 5th respondents in Survey NO.1258/11, situated at Erichanatham Village, Sivakasi Taluk, Virudhunagar District by considering the representation of the petitioner to the respondents 1 to 3 dated 04.12.2017.

For Petitioner	:	Mr.S.Ramasamy
For Respondent No.1	:	Mr.V.R.Shanmuganathan Special Government Pleader
For Respondents 2 and 3	:	Mr.D.Muruganantham Additional Government Pleader
For Respondents 4 and 5	:	Mr.R.Vijayakumar

**ORDER**

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

Heard Mr.S.Ramasamy, learned counsel appearing for the petitioner, Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the first respondent, Mr.D.Muruganantham, learned Additional Government Pleader appearing for the respondents 2 and 3 and Mr.R.Vijayakumar, learned counsel appearing for the respondents 4 and 5.

2.The petitioner has filed this writ petition seeking for a direction to remove the encroachment (erecting Tin Shed) made in public pathway by the 4th and the 5th respondents in Survey No.1258/11, situated at Erichanatham Village, Sivakasi Taluk, Virudhunagar District by considering the representation of the petitioner to the respondents 1 to 3 dated 04.12.2017.

3.An identical relief was sought for by one another person in respect of same Survey Number in W.P.(MD)No.4314 of 2018. In the said writ petition, the fourth respondent therein, has impleaded one R.Karthikeyan, as fifth respondent. In the instant case, the wife of the fourth respondent is the fifth respondent. There is an allegation that there is an encroachment into the Government land. The Court while, disposing of the earlier writ petition on 01.03.2018 did not render any positive opinion on the correctness of the allegation. Therefore, the writ petition was disposed of without issuing notice to the respondents 4 and 5. The operative portion of the order reads as follows:

"2.In the light of the direction, we propose to issue notice in this writ petition and considering the documents placed before this Court, notice to the respondents 4 and 5, is dispensed with.

3.The petitioner represents the Public of Erichanatham Village, Sivakasi Taluk, Virudhunagar District. The grievance expressed by the petitioner in the representation dated 05.01.2018, which has been sent by the petitioner and other persons, is that the fourth and fifth respondents have encroached the public pathway and a public place (Manthai) comprised in Survey Nos.1258/11 and 1258 of 19 respectively.

4.The learned counsel for the petitioner has drawn the attention of this Court to the copy of the sale deed executed in favour of the 5th respondent dated 04.03.2015 registered as Document No.526/2015. Referring to the description of the property, it is



the common pathway and public place. Much earlier, the Panchayat has passed a resolution on 12.01.2002, pointing out the encroachment made in the public land and has forwarded the same for appropriate action to be initiated by the Revenue Authorities. Since nothing happened thereafter, the petitioner and other villagers have submitted a representation dated 05.01.2018, which has been sent by Registered Post with acknowledgment due and received the office of the respondents 1 to 3, as it could be seen from the postal acknowledgment card. Further, the learned counsel has referred to the FMB sketch and the adangal to show that the lands are Government lands.

5. In the light of the above facts, it is a fit case where the second respondent should consider the representation and direct inspection to be done and if there is any encroachment in a public land, immediate action is required to be taken. However, this does not mean that if the encroachment is found, forcibly the encroachers have to be thrown out. If such action is initiated, the encroachers would approach this Court complaining violation of principles of natural justice. If there is an encroachment on the public land, then the second respondent has to follow the procedure contemplated under the provisions of the Tamil Nadu Land Encroachment Act, 1905 or any other applicable Statute and then proceed in accordance with law.

6. Thus, without expressing any positive opinion on the petitioner's grievance, we direct the second respondent to consider the petitioner's representation dated 05.01.2018 and cause inspection of the property and proceed in accordance with law, after issuing notice to the respondents 4 and 5. The aforesaid directions shall be complied with by the second respondent, within a period of 8 weeks from the date of receipt of a copy of this order."

4. In the present writ petition also, for the very same survey number, no separate direction is required to be issued. It would suffice to direct the authorities to take note of the petitioner's representation also, while considering the representation of the other writ petitioner's. The Additional Government Pleader produced a copy of Adangal which has been certified by the Tahsildar, Sivagangai District, stating that the land comprised in Survey No.1288/11 and old No.536/1 has been classified as 'Sarkar Kaidi'. The fmb sketch has been produced to show that the extend of area is about 12.4 x 4.6 x 12.2 x 4.2. In any event, it is for the parties to act as per the direction issued in the



earlier writ petition.

5. With the above direction, the writ petition is disposed of.
No Costs.

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Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
Virudhunagar District,
Virudhunagar.
2. The Tahsildar,
Sivakasi,
Virudhunagar District.
3. The Block Development Officer,
Sivakasi Panchayat Union,
Virudhunagar District.

- + 1 cc TO Mr.S.Ramasamy , Advocate in SR No. 57905
- + 1 cc TO Mr.R.Vijayakumar , Advocate in SR No. 58641
- + 1 cc TO The Special Government Pleader in SR No. 58453

Mrn

AE/KKR/SAR4/28.05.2018/4P/7C

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