



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.03.2018

CORAM:

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

Writ Petition (MD).No.3004 of 2018

C.Krishnan

... Petitioner

Vs.

1. The District Collector,
At Nagercoil,
Kanyakumari District.
2. The Assistant Director Panchayat,
Nagercoil,
Kanyakumari District.
3. The Revenue Divisional Officer,
Padmanabapuram,
Kanyakumari District.
4. The Tahsildar,
Vilavancode Taluk,
Kanyakumari District.
5. Keelkulam Town Panchayat,
Rep. By the Executive Officer,
Keelkulam, Kanyakumari District.

6. T.Dennis ... Respondents
(Respondent No.6 is impleaded vide Court order
dated 20.02.2018 in W.M.P.(MD)No.3482 of 2018)

Prayer: Writ Petition is filed under Article 226 of Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondents to remove the encroachment made in Survey No.376/1A, Keelkulam A Village, Kanyakumari District admeasuring 1 Are and construct an over head tank in the said property within a time frame that may be stipulated by this Court.

For Petitioner : Mr.S.C.Herold Singh
For Respondents 1 to 4 : Mr.D.Muruganantham
Additional Government Pleader
For Respondent No.5 : Mr.Aayiram K. Selvakumar
For Respondent No.6 : Mr.T.Lajapathi Roy

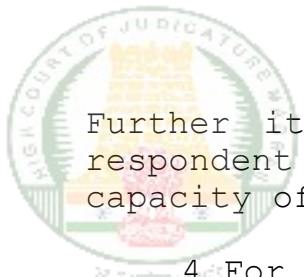
**ORDER**

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

Heard Mr.S.C.Herold Singh, learned counsel appearing for the petitioner, Mr.D.Muruganantham, learned Additional Government appearing for the respondents 1 to 4, Mr.Aayiram K.Selvakumar, learned counsel appearing for the fifth respondent and Mr.T.Lajapathi Roy, learned counsel appearing for the sixth respondent.

2.The petitioner seeks for an issuance of direction to the respondents to remove the encroachment made in Survey No.376/1A, Keelkulam A Village, Kanyakumari District and construct an over head tank. The petitioner terms the construction put up by the sixth respondent as an encroachment on the ground that he has gifted the property in favour of the Panchayat for erecting the over head tank. However, the Panchayat has exchanged the property for some other property. The petitioner's claim is that the construction put up by the sixth respondent is an encroachment. The facts of the case, as can be seen from the various G.O.s passed by the authorities, shows that there is no encroachment. The sixth respondent has donated the extent of 7 ½ acres of land since the land was owned by him in the same village in different location so as to enable the Government authorities to provide a play ground for the higher secondary School. The land, which was given by the sixth respondent, has been registered vide document dated 09.10.2017. The gift has been accepted and now being utilised by the School. In exchange of the said land, the land comprised in Survey No.376/1A, has been given to the sixth respondent. The petitioner, who had donated the said land, is before this Court stating that the sixth respondent has encroached into the property which he had gifted for the particular purpose.

3.In our considered view, the possession and enjoyment of the property by the sixth respondent cannot be termed as "encroachment" as he has been permitted to enter upon the land because of the exchange of the two properties which was permitted by the authorities. In fact, in accordance with the order passed by the Additional Chief Secretary/ Commissioner of Land Administration dated 08.10.2016, the Director of Town Panchayat has taken steps and effected exchange. Thus, we find that the Government Higher Secondary School is stated to have a better playground facility now. Apart from the above, we may point out that the petitioner, being a donor of the said land, has executed the gift deed in favour of the Town Panchayat and the gift having been accepted, the petitioner has no right over the said land nor the petitioner can dictate terms. The petitioner stated that the land can be used only for a particular use. The donee, Town Panchayat is the lawful owner of the land. They have exchanged the lands owned by the sixth respondent for the development of the Government Higher Secondary School.



Further it is pointed out by the learned counsel for the sixth respondent that there is already a water tank in existence with the capacity of 60,000 litres.

4. For the above reasons, we hold that there is no encroachment into the lands in question.

5. With the above observation, the writ petition stands disposed of. No Costs.

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
At Nagercoil,
Kanyakumari District.
2. The Assistant Director Panchayat,
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5. Keelkulam Town Panchayat,
Rep. By the Executive Officer,
Keelkulam,
Kanyakumari District.

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 58455
+ 1 CC TO Mr.S.C.HEROLD SINGH, ADVOCATE IN SR No. 58153
+ 1 CC TO Mr.T.LAJAPATHI ROY, ADVOCATE IN SR No. 58010

MRN

TE/KKR/SAR-1 : 23/04/2018 : 3P/9C

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