



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

AND

THE HONOURABLE MRS.JUSTICE R.THARANI

W.P (MD)No.4913 of 2018

C.Ayubkhan : Petitioner

Vs.

1. The District Collector,
Collectorate Office,
Ramanathapuram District.

2. The Tahsildar,
Keezhakkarai Taluk,
Keezhakkarai,
Ramanathapuram District.

3.Jahirabeevi : Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the second respondent to remove the encroachments made by the third respondent in public pathway in Street in Survey No.237/30, for an extent of 0.0042.0 Sq.Mt., situated at Periyapattinam Village, Keezhakkarai Taluk, Ramanathapuram District.

For Petitioner : Mr.D.Senthil

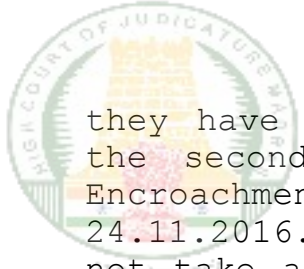
For Respondents : Mr.M.Jeyakumar,
Additional Government Pleader
for R.1 & R.2
Mr.C.Susikumar for R.3

O R D E R

(Order of the Court was made by **R.SUBBIAH, J.**)

This writ petition has been filed seeking issuance of a Writ of Mandamus, directing the second respondent to remove the encroachments made by the third respondent in public pathway in Survey No.237/30, to an extent of 0.0042.0 Sq.Mt., situated at Periyapattinam Village, Keezhakkarai Taluk, Ramanathapuram District.

2. The case of the petitioner is that the third respondent is having a land near Survey No.86/1 to an extent of 10 acre at Periyapattinam Village, Keezhakkarai Taluk. She constructed a house in her survey number and while constructing the house, she encroached the street in Survey No.237/30 and constructed a compound wall and blocked the pathway. Therefore, the villagers moved a request to the respondents 1 & 2 to remove the encroachment. But,



they have not taken any steps and after repeated representations, the second respondent issued a notice under Section 7 of Land Encroachment Act, vide proceedings in Na.Ka.No.A8/11019/2016, dated 24.11.2016. After issuing the said notice, the second respondent did not take any further steps to remove the encroachment and finally, after repeated requests from the villagers, the second respondent has issued notice under Section 6 of the Land Encroachment Act, on 09.03.2017. Thereafter, the authorities kept quiet.

3. In the meanwhile, the third respondent filed a suit in O.S.No.184 of 2016 on the file of the District Munsif Court, Ramanathapuram, against the respondents 1 & 2 and one Sahul Hameed for the relief of interim injunction. The said suit is still pending. Now, citing the pendency of the said suit, the authorities are not taking any steps to remove the encroachment. In fact, the suit was filed only in respect of Old Survey No.86/1, New Survey No.237/33 of Periyapattinam Village, Keezhakkarai Taluk, Ramanathapuram District, but, the encroachment has been made in Survey No.237/30, which is classified as a pathway. Therefore, there cannot be any impediment for the respondents 1 & 2 to take action against the third respondent and therefore, the learned Counsel for the petitioner prays for allowing the present writ petition.

4. Heard the learned Counsel on either side and perused the documents placed on record.

5. It is seen that the suit schedule survey number is different from the survey number mentioned in the Section 7 notice. Therefore, we are of the view that there cannot be any impediment for the respondents 1 & 2 to remove the encroachment, as rightly contended by the petitioner. Therefore, we direct the respondents 1 & 2 to remove the encroachment made in Survey No.237/30 at Periyapattinam Village, Keezhakkarai Taluk, Ramanathapuram District, in the manner known to law, within a period of six weeks from the date of receipt of a copy of this order.

6. With the above directions, this writ petition stands disposed of. No costs.

Sd/-

Assistant Registrar(CS-I)

Sub Assistant Registrar(CS-II)

/True Copy/

To

1. The District Collector,
Collectorate Office,
Ramanathapuram District.



2. The Tahsildar,
Keezhakkarai Taluk,
Keezhakkarai,
Ramanathapuram District.

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+1cc to Mr.D.Senthil,Advocate Sr.No.95721

+1cc to SPL.Govt.Pleader, Sr.No.95770

SSL/GK

KM/SV/SAR2/12.12.2018/3P/5C

**ORDER MADE IN
W.P (MD) No.4913 of 2018
16.11.2018**