



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 08.03.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MRS.JUSTICE R.THARANI

W.P. (MD) .No.4992 of 2018

M.Masanam

... Petitioner

Vs.

1. The Tahsildar,
Ilaiyankudi Taluk Office,
Ilaiyankudi,
Sivagangai District.

2.Jayaraman

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the first respondent to evict the encroachment made by the 2nd respondent in the channel situated in Sivagangai District, Ilaiyankudi Taluk, Kachathanallur Village in S.F.No.122/5A and consequently, directing the 1st respondent to maintain the said channel as appeared in the Revenue records based on the petitioner's representation dated 14.12.2017.

For Petitioner : Mr.S.Karthik Subramanian

For R1 : Mr.VR.Shanmuganathan
Special Government Pleader

O R D E R

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

Heard Mr.S.Karthick Subramanian, learned counsel appearing for the petitioner and Mr.VR.Shanmuganathan, learned Special Government Pleader appearing for the first respondent.

2.In the light of the earlier direction issued by this Court in W.P.(MD).No.11337 of 2017 filed by the second respondent herein, which has not been complied with by the first respondent, notice to the second respondent is dispensed.



3.The petitioner seeks for removing the encroachment caused by the second respondent, which is classified as Oodai in the revenue records. The petitioner has been successful before the Civil Court wherein he has obtained a decree stating that the land in question is a 'Oodai', in O.S.No.23 of 2003 dated 27.04.2007, on the file of the District Munsif Court, Ilaiyankudi. The said judgment was confirmed by the Sub Court, Sivagangai in A.S.No.100 of 2007 dated 30.08.2010, the said decree has become final. It is seen that the first respondent initiated action by issuing notice dated 08.06.2017. Immediately the second respondent filed W.P.(MD). No.11337 of 2017 challenging the said notice. This Court found that the said notice was in the nature of eviction order and it has been issued without issuing a show cause notice. Therefore, the said notice was set aside leaving it open to the first respondent to issue notice to the second respondent herein invoking the provisions of the Applicable Act and dispose the same on merits and as per law. Therefore, this Court has set aside the notice dated 08.06.2017 only on the technical ground of violation of principle of natural justice. It does not amount that the first respondent should remain silent. Initially, the officials of the first respondent took a stand that there is no Oodai, but, subsequently, they corrected themselves and stated that during UDR survey, Oodai was wrongly reclassified and subsequently, action was initiated and the Oodai has been shown in the Field Map Book. Further, it is submitted that the Oodai is intact to a partial extent and only the remaining extent, action should be taken for removal of encroachment.

4.In the light of the above, the first respondent is directed to proceed in terms of the observations made in W.P.(MD).No.11337 of 2017 dated 16.06.2017 filed by the second respondent herein, issue notice to the second respondent clearly indicating as to what is the stand of the Revenue Department giving 15 days time to the second respondent to give explanation, after which, the first respondent shall conduct an enquiry by directing the petitioner and the second respondent to appear in person and thereafter to pass a speaking order on merits and in accordance with law. The aforesaid exercise shall be complied with by the first respondent within a period of two 2 weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(Crl side)

/True Copy/

Sub Assistant Registrar



To

1.The Tahsildar,
Ilaiyankudi Taluk Office,
Ilaiyankudi,
Sivagangai District.

+ 1 cc TO Mr.S.Karthick Subramanian , Advocate in SR No. 53842
+ 1 cc To The Special Government Pleader in SR No. 54335

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AE/SKN RSK/SAR2/24.04.2018/3P/4C

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