



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.03.2018

CORAM :

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.P. (MD) No.948 of 2018

and

W.M.P. (MD) Nos.993 of 2018

1. G.Chandra

2. G.Muthulakshmi

3. P.Poobalan

... Petitioner

Vs.

1. The District Collector,
Sivagangai District, Sivagangai.

2. The Tahsildar,
Kalaiyarkoil Taluk, Sivagangai District.

3. Y.Ambrose

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the impugned order in Na.Ka.No.A4/243/2015, dated 03.01.2018 on the file of the second respondent and to quash the same insofar as the petitioners are concerned and further directing the respondents 1 and 2 to grant Patta to the petitioners concerned.

For Petitioners : Mr.G.Prabhu Rajadurai

For Respondent 3 : Mrs.R.Saraswathy,
for Mr.D.Saravanan

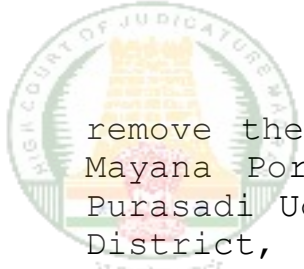
For R1 & R2 : A.K.Baskarapandian, Spl.G.P

O R D E R

(Order of the Court was made by **M. SATHYANARAYANAN, J.**)

Facts leading to these litigations are intervined and hence, both the cases are disposed of by this common order.

2. The petitioner in the writ petition in W.P.(MD).No.25096 of 2016, against the District Collector/Chairman of Steering Committee, Sivagangai District, the District Revenue Officer, Sivagangai District, Sivagangai, the Revenue Divisional officer, Revenue Divisional Office, Sivagangai and the Thasildar, Kalaiyarkoil Taluk Office, Sivagangai District, praying for issuance of Writ of Mandamus directing the fourth respondent to



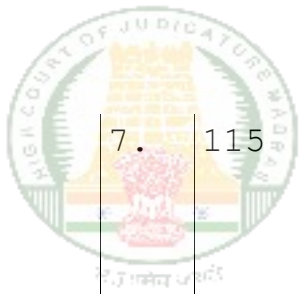
remove the encroachment in Survey No.115, which is classified as Mayana Poramboke (Burial Ground) situated at Andoorani Village, Purasadi Udaippu of Revenue Group, Kalaiyarkovil Taluk, Sivagangai District, by virtue of the proceedings of the second respondent, dated 03.12.2015, within a time stipulated by this Court.

WEB COPY

3. The Division Bench of this Court, vide final order dated 02.01.2017, has allowed the writ petition, by directing the fourth respondent to take appropriate action on the basis of the letter dated 03.12.2015, within a stipulated time of one month. The petitioner in the said writ petition, alleging wilful disobedience and in compliance of the said order, has filed the Contempt Petition.

4. The Contempt Petition was listed for hearing on 11.01.2018 and it was entertained and it was closed on 11.01.2018, by taking into consideration the fact that the survey has been completed on 06.01.2018 and notices under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, (Tamil Nadu Act 3 of 1905) have also been issued to the concerned encroachers and however, this Court, directed the respondent to file a status report and accordingly, the respondent has filed the status report. It is relevant to extract Paragraph No.3 of the status report:

Sl. No.	Survey No.	Extent	Name of the encroachers	Nature of Encroachment	Remarks
1.	114/6	0.00.53	Madha Hebi	Madha Statue	Encroachment Removed
2.	114/6	0.00.39	V.Krishnan	Coat Shed	Encroachment Removed
3.	114/6	0.00.88	Rajeswari (K.Meenal)	Tiled house	In view of pendency of I.A.No.7 of 2015 in O.S.No.3 of 2015 on the file of the DMC, Sivagangai, Encroachment yet to be removed.
4.	114/6	0.00.21	Rajeswari (K.Meenal)	Shop (Tiled)	Encroachment removed
5.	114/6	0.00.05	Yasothai	Shop (Asbestos)	Encroachment removed
6.	114/6	0.00.08	Palani	Shop (Asbestos)	Encroachment removed

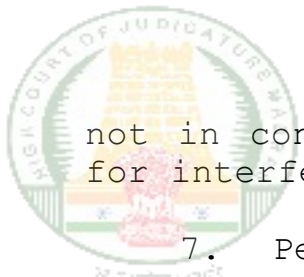


WEB COPY

7.	115	0.01.15	Chandra	R.C.House	In view of interim stay granted by this Hon'ble Court, encroachment not yet removed.
8.	115	0.01.46	Boopalan	Damaged tiled house and shop	In view of interim stay granted by this Hon'ble Court, encroachment not yet removed.
9.	115	0.03.30	Muthulakshmi	R.C.House and shop	In view of interim stay granted by this Hon'ble Court, encroachment not yet removed.

5. It is brought to the knowledge of this Court that Tmt. G.Chandra, Tmt.G.Muthulakshmi and Thiru P.Poobalan had filed W.P. (MD).No.948 of 2018, praying for issuance of Writ of Certiorarified Mandamus to quash the proceedings of the Thasildar, Kalayarkovil Taluk, Sivagangai District, dated 03.01.2018, with the further direction to the respondents 1 and 2 to grant Patta to them and it was entertained on 12.01.2018 and interim stay has been granted. Since it is brought to the knowledge of this Court that this writ petition also connected with Cont.P.(MD).No.2352 of 2017 in W.P.(MD).No.25096 of 2016, which is listed for compliance, this writ petition has also taken up for final disposal.

6. Mr.G.Prabhu Rajadurai, learned counsel appearing for the petitioner invited the attention of this Court to the typed set of documents and would submit that the predecessor in title of the petitioners, wherein possession and enjoyment of the land in question for very many decades and 'B' Memo has also been issued and repeated representations have also been given to issue house site Patta and the local body has also passed a resolution and despite that, no positive orders came to be passed so far by granting a house site Patta and drawn the attention of this Court to the impugned order of the second respondent dated 03.01.2018 and would submit that the impugned order merely relies upon the order dated 02.01.2017 made in W.P.(MD).No.25096 of 2016 and the petitioners and others were called upon to remove the encroachment at 10.30 a.m. on 05.01.2018, failing which appropriate action will be taken to remove the encroachment and that_such proceedings are



not in consonance with the relevant provisions of law and prays for interference.

7. Per contra, Mr.A.K.Baskara Pandian, learned Special Government Pleader appearing for the Official respondents has drawn the attention of this Court to the status report filed by the respondent dated 07.03.2018 in Cont.P.(MD).No.2352 of 2017 in W.P.(MD).No.25096 of 2016 and would submit that the encroachments have been removed by following the due process of law and since the petitioners had obtained interim orders, the encroachments have not been removed.

8. It is also brought to the knowledge of this Court that the writ petitioners were also issued with notices under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, and they did not make a challenge by filing any appeal and as such, the respondents, by exercising due process of law, are entitled to remove the encroachment cast upon the lands, which is classified as 'Mayana Poramboke'.

9. This Court has carefully considered the rival submissions and also perused the materials placed before this Court.

10. Though it is the submission of the learned Special Government Pleader that action has been taken against the writ petitioners under the provisions of Tamil Nadu Land Encroachment Act, the impugned notice does not disclose the said reason and merely informed the petitioners as to the removal of the encroachment at 10.30 a.m. on 05.01.2018 and challenging the same, the writ petition has been entertained and interim orders have been passed. In the considered opinion of this Court, since the impugned notice is bereft of material particulars to initiation of action under the provisions of Tamil Nadu Land Encroachment Act, it warrants interference.

11. In the light of the status report, dated 07.03.2010, made in Cont.P.(MD).No.2352 of 2017 in W.P.(MD).No.25096 of 2016, no further orders are necessary. In the result, W.P.(MD)No.948 of 2018 is partly allowed and the impugned proceedings of the second respondent is quashed and it is open to the respondents 1 and 2 to follow the due process of law by issuing fresh notices to the petitioners herein as to the invocation of the provisions of the Tamil Nadu Land Encroachment Act, 1992, and the said exercise is to be carried out within a period of eight weeks from the date of receipt of a copy of this order. If the petitioners are so advised and if it is open to them under law, they are always at liberty to work out their appeal and revisional remedy under the provisions of Tamil Nadu Land Encroachment Act and till such time, the second respondent shall defer further decision as to the removal of encroachment. It is also made clear that for a period of eight



weeks from the date of receipt of a copy of this order, the petitioners cannot create any third party right in respect of the superstructure in question and shall not alter the physical features also. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(crl side)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
Sivagangai District, Sivagangai.
2. The Tahsildar,
Kalaiyarkoil Taluk, Sivagangai District.

+1cc to Mr.D.Saravanan, Advocate Sr.No.54871
+1cc to Mr.G.Prabhu Rajadurai, Advocate Sr.No.54697

AKV

VB/RSK/SAR3/28/04/2018/5P/5C

W.P. (MD) No. 948 of 2018
13.03.2018