



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 07.09.2018
CORAM :
THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P(MD)No.20735 of 2015 and W.P.(MD) No.19289 of 2018

V.Chinna Kalimuthu

... Petitioner in both
Writ Petitions

vs.

1. The District Collector,
Thoothukudi District, Thoothukudi.

2. The Tahsildar,
Vilathikulam Taluk, Thoothukudi District.

3. The Executive Officer/President
Goundanpatti Panchayat
Goundanpatti, Vilathikulam Taluk
Thoothukudi District.

4. P.Ravi Joseph

... Respondents in
W.P.No.20735/2015

The Tahsildar
Vilathikulam Taluk
Thoothukudi District.

... Respondent in
W.P.No.19289/2018

Prayer in W.P. (MD) No.20735/2015: Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus to direct the 1st respondent to consider the petitioner's representation dated 30.10.2015.

Prayer in W.P.No.19289/2018: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiotari to call for the records pertaining to the impugned order dated 28.08.2018 passed by the respondent removing the alleged encroachment made by the petitioner made in Survey No.47/10C and 47/11D, in Goundanpatti Village, Vilathikulam Taluk, Thoothukudi District and quash the same.

For Petitioner : Mr.V.Sasikumar

For Respondents : Mr.V.R.Shanmuganathan

for RR1 to RR2 in W.P.No.20735/2015
and for respondent

Special Government Pleader in W.P.No.19289/2018

Mr.T.Lajapathi Roy for R4

in W.P.No.20735/2015

No Appearance for R3

in W.P.No.20735/2015

**COMMON ORDER**

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

W.P.(MD) No.19289/2018 is directed against the impugned proceedings dated 28.08.2018 issued by the Tahsildar, Vilathikulam directing the petitioner to remove the unlawful encroachment made in S.Nos.47/10C and 47/11D in Goundanpatti Village, Vilathikulam Taluk, Thoothukudi District in Poosthithi street (Nilaviyal pathai).

2.Learned counsel for the petitioner, assailing the impugned order would submit that the petitioner and his brother Periya Kalimuthu have purchased a landed property in old S.No.90/B (New S.No.47/11) from one Pichaiammal and Ramalakshmi as per the sale deed dated 24.10.1969. After some time, alleging that the petitioner has encroached into the land in S.Nos.47/10C and 47/11D, the respondent issued notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, (hereinafter referred to as 'the Act') as if the property in S.No.47/10C and 47/11D has been encroached to an extent of 19 Sq.mtr and 50 sq.mtr respectively by fixing stone pillars in Poosthithi Street and the petitioner was also called upon to submit his explanation. Immediately thereafter, a detailed representation was given on 31.07.2018, inter alia, objecting the issuance of the aforementioned notice that the property has been purchased from one Pitchaiammal and Ramalakshmi by registered sale deed and on the basis of the registered sale deed, he has laid stone pillars from preventing the anti social elements, who misused the petitioner's property. While so, the respondent ought not to have ordered for removal of the same within seven days by issuing the impugned notice. Concluding his arguments, the learned counsel submitted that once the respondent has issued notice under Section 7 of the Act, on receipt of the explanation offered by the petitioner on 31.07.2018, they are bound to consider the explanation before passing an order for removal of the encroachment under Section 6 of the Act, which has not been done.

3. Learned Special Government Pleader, refuting the above, would submit that when the petitioner's patta dated 01.08.2018 issued by the Tahsildar clearly shows that the petitioner is the owner of land covered in S.No.47/11 and 47/13 having an extent of 0.3.00 and 0.3.50 hectares respectively, the petitioner ought not to have gone out of his land and put up any encroachment in the land covered in S.Nos.47/10C and 47/11D, which are Poosthithi Street by erecting stone pillars. Since the petitioner has caused inconvenience to the people living in that vicinity, one Mr.Ravi Joseph came before this Court by filing W.P.(MD) No.12237/2018 seeking issuance of writ of Mandamus directing the District Collector, Tuticorin and other revenue authorities to remove the encroachment made by the petitioner herein in S.Nos.47/10C and 47/11D in Goundanpatti Village, on the basis of the representation and in the light of G.O.Ms.No.540, Revenue LD6(2) Department, dated

04.12.2014. This Court, after hearing the petitioner and the respondents therein, by order dated 31.07.2018 and by recording the submission made by the fourth respondent therein, made it clear that the pendency of the writ petition in W.P.(MD) No.20735/2015 filed by the petitioner would not stand in the way of the authorities to remove the encroachment complained of and disposed the said writ petition and by virtue of the said order, the respondents have removed the stone pillars erected by the petitioner in S.Nos.47/10c and 47/11D.

4. We are fully convinced with the submissions made by the learned Special Government Pleader. The reasons being,

(a) The patta issued by the Tahsildar in favour of the petitioner clearly shows that he is the owner of the land in S.No.47/11 and 47/13 having an extent of 0.3.00 and 0.3.50 hectares respectively ; and

(b) The encroachment complained of by Mr.Ravi Joseph in W.P. (MD) No.12237/2018 is related to the land in S.NO.47/10C and 47/11D Goundanpatti Village, as this Court, by order dated 31.07.2018 has given specific directions to the revenue authorities for removal of the encroachment found in S.No.47/10C and 47/11D in Goundanpatti village and the same has been removed, which is no way connected to the petitioner and hence, we do not find any merit in this writ petition. Accordingly, W.P.(MD) No.19289/2018 fails and the same is dismissed with cost of Rs.5,000/- (Rupees five thousand only) payable to the Kerala Chief Minister's Distress Relief Fund.

W.P.(MD) No.20735/2015:

In view of the order passed in W.P.(MD) No.19289/2018, W.P.(MD) No.20735/2015 stands dismissed with cost of Rs.5,000/- (Rupees five thousand only) payable to the Kerala Chief Minister's Distress Relief Fund.

Post these Writ Petitions for reporting compliance on 17.09.2018.

Sd/-
Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar(CS-IV)

To
1. The District Collector,
Thoothukudi District,
Thoothukudi.



2. The Tahsildar,
Vilathikulam Taluk,
Thoothukudi District.

3. The Executive Officer/President
Goundanpatti Panchayat
Goundanpatti
Vilathikulam Taluk
Thoothukudi District.

+2CC to Mr.V.Sasikumar, Advocate, SR.Nos.83517,83518

+1CC to Mr.T.Lajapathi Roy, Advocate, SR.No.83138

+1CC to the Special Government Pleader SR.No. 83359

W.P(MD)Nos.20735/2015 and 19289 of 2018
07.09.2018

RR

ES/RP/SAR 4/14.09.2018/4P/8C