



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 23.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA
and

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P(MD)No.18317 of 2018

and

W.M.P.(MD) Nos.16187 and 16188 of 2018

P.Paramasivan

.. Petitioner

Vs.

1.The District Collector,
Virudhunagar District.

2.The Tahsildar,
Aruppukkottai,
Virudhunagar District.

3.The Block Development Officer,
Thiruchuzhi Union,
Aruppukkottai,
Virudhunagar District.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records pertain to the impugned order passed by the third respondent in Na.Ka.A7/1001/18 dated 09.08.2018 and quash the same and consequently directing the third respondent not to remove the steel shed which is situated in S.No.480/23, Kallurani Village, Aruppukkottai Taluk, Virudhunagar District without following due process of law.

For Petitioner	: Mr.G.R.Sathish
For Respondents	: Mr.C.Ramar,
(R1 & R2)	Additional Government Pleader.
For Respondent -3	: Mr.V.Anand

ORDER

[Order of the Court was made by T.RAJA, J.]

The present writ petition is directed against the impugned order, dated 09.08.2018, passed by the Block Development officer, Thiruchuzhi Union, Aruppukkottai Taluk, Virudhunagar District, in and by which, the petitioner was asked to remove the encroachment within seven days, failing which, the third respondent informed the petitioner that with the police protection, the alleged encroachment made by the petitioner in Survey No.479/35, encroaching two metres on southern side and one metre of northern side would be removed and



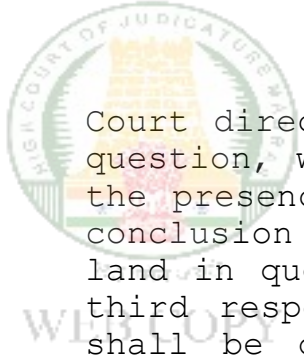
cost thereof would also be recovered from the petitioner.

2. The learned counsel appearing for the petitioner assailing the same would submit that the land covered in Old Survey No.137, New S.No.480 at Kallurani Village, Aruppukkottai Taluk, Virudhunagar District, measuring an extent of 77-1/2 feet east western side and 31 feet on the north western side originally owned by Kaalappa Gounder and his wife Leelavathi was purchased by him under two registered sale deeds, bearing Document Nos.1703 & 1704 of 2000 respectively, on the file of the Sub Registrar, Thiruchuli, Virudhunagar District. From the date of purchase, the petitioner's family has been in peaceful possession and enjoyment of the same. After sometime, they have also executed the sale deed in favour of one Nagarajan son of Duraipandi in respect of 37- ½ feet east western side and 31 feet of north southern side in the same survey number. The said Nagarajan also executed a sale deed in favour of one Kubendran son of Natarajan. Thereafter, the total extent of 77- ½ feet east western side and 31 feet of north southern side has been divided as two portions and one portion is coming under Survey No.480/25, which is under the possession of the petitioner. The remaining portion falling in S.No.480/23 is with Mr.Kubendran. However, the petitioner and the said Kubendran have jointly put up a steel shed by erecting pillars for vehicle parking.

3. In the meanwhile, the petitioner has received a notice, dated 23.08.2018, in Na.Ka.No.A7/1001/18, from the Block Development Officer, Thiruchuzhi Union / the third respondent herein, informing the petitioner that the steel shed for vehicle parking has been put up in a pathway. Without there being any measurement in the said survey number, the impugned order cannot say that he should remove the encroached portion, unless there is a demarcation at the survey of the land and also specifying the extent to which the petitioner if at all has encroached. Neither the petitioner nor the respondent would be able to indicate that the petitioner is an encroacher.

4. It is at this stage, the learned Additional Government Pleader appearing for the respondents taking note of the error committed in the impugned notice submitted that the impugned notice has not specified to what extent the petitioner has encroached. Therefore, the third respondent may be directed to measure the land in Survey No.479/35 to find out what is the extent of land encroached by the petitioner. The survey can be done only after putting on notice before measuring the property, in the presence of petitioner. If the third respondent comes to a conclusion that there is any encroachment, thereafter, the petitioner should be informed to vacate and remove the encroachment, failing which, a suitable action can be taken.

5. Placing on record the submission made by the learned Additional Government Pleader appearing for the respondents, this



Court directs the 3rd respondent to measure and survey the land in question, with the help of surveyor, after putting on notice and in the presence of the petitioner. If the third respondent comes to a conclusion that the petitioner has put up the steel shed in the land in question encroaching the pathway, it is always open to the third respondent to remove the encroachment. The said exercise shall be done within a period of three weeks from the date of receipt of a copy of this order.

6. With this, the Writ Petition stands disposed of. No cost. Consequently, connected miscellaneous petitions are closed.

Sd/
Assistant Registrar (AS)

/True copy/

Sub Assistant Registrar (CS-II)

To

- 1.The District Collector,
Virudhunagar District.
- 2.The Tahsildar,
Aruppukkottai,
Virudhunagar District.
- 3.The Block Development Officer,
Thiruchuzhi Union,
Aruppukkottai,
Virudhunagar District.

+1cc to Mr.G.R.Sathish, Advocate, SR.No.79797

W.P (MD) No.18317 of 2018
23.08.2018

CP/MPK
KK/RP/SAR-2/01.10.2018/3P-5C