



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.P(MD)No.18530 of 2017

P.M.Selvaraj

... Petitioner

Vs.

1.The District Collector,
Office of the District Collector,
Pudukkottai District.

2.The Revenue Divisional Officer,
Pudukkottai District.

3.The Tahsildar,
Thirumayam Taluk Office,
Pudukkottai District.

4.Selvi

5.Seetha

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondents 1 to 3 herein to take immediate action to measure the illegal encroachments put up by the respondents 4 and 5 in the Government Poramboke land comprised in Survey No.133, Dr.Ambedkar Nagar, Kuliparai Village, Thirumayam Taluk, Pudukkottai District on the basis of the representation given by the petitioner, dated 24.07.2017.

For Petitioner

: Mr.B.Jameel Arasu

For RR 1 to 3

: Mr.S.Satheesh Kumar,
Additional Government Pleader

For RR 4 & 5

: Mr.K.Baalasundharam

**ORDER**

(Order of the Court was made by

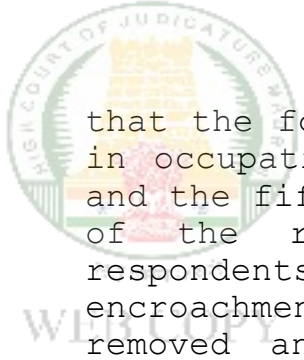
M. SATHYANARAYANAN, J.)

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The Writ Petition, styled as a Public Interest Litigation, is filed by the petitioner alleging among other things that there is a Government poramboke land situated in Survey No.133, Dr.Ambedkar Nagar, Kuliparai Village, Thirumayam Taluk, Pudukkottai District. The petitioner claims to be a Farmer by profession and was a member of Kulipirai Village Panchayat-Ward No.3 and he belongs to Scheduled Caste Community. It is also the claim of the petitioner that due to hard and sincere efforts, 75 landless poor persons belonging to the Adi Dravidar Community were granted assignment pattas and after assignment, some portion of the lands remains for communal purpose. It is the specific case of the petitioner that the private respondents 4 and 5 had encroached upon the said lands comprised in Survey No.133/2 and put up thatched sheds, semi permanent sheds and in this regard, the petitioner has submitted a representation, dated 24.07.2017 to the Secretary to Government, Home Department and the copies were earmarked to the respondents 1 to 3. The office of the first respondent has also sent a memo, dated 31.07.2017 to the third respondent to look into the complaint/representation given by the petitioner and inform the decision taken to the Government and the copy marked thereon. The grievance expressed by the petitioner is that despite such direction issued by the first respondent, the third respondent has failed to take any kind of action to remove the encroachment on the part of the respondents 4 and 5 and hence, the petitioner is constrained to approach this Court by filing this Writ Petition.

2.The learned counsel appearing for the petitioner would submit that the petitioner is also one of the beneficiaries of the assignment patta and despite that, the respondents 4 and 5 have encroached upon some portion of the land in Survey No.133/2, which is meant for communal purpose and also put up thatched shed. Though the said fact has been brought to the knowledge of the concerned respondents, no action has been taken so far. Therefore, prays for appropriate orders for measuring the encroachment and for further action.

3.Mr.S.Satheesh Kumar, learned Additional Government Pleader appearing for the official respondents, has drawn the attention of this Court to the counter affidavit filed by the third respondent and would submit that the land in Survey No.133/2, admeasuring to an extent of 0.95.0 Hectares, was acquired by the Adi Dravidar Welfare Department for houseless people belonging to the Adi Dravidar Community and 73 families were effected and each of them was granted house site patta of three cents each and the respondents 4 and 5 are also beneficiaries under the said Scheme and it is further stated



that the fourth respondent had occupied a portion of land and he is in occupation of the land by constructing a house in hallow block and the fifth respondent has erected a tin sheet shed and in respect of the representation, enquiry was also conducted and the respondents 4 and 5 stated that they are ready to vacate the encroachment only if all other encroachers in the said land are removed and on instructions, the learned Additional Government Pleader appearing for the official respondents stated that further action will be taken strictly in accordance with law in respect of removal of the encroachments.

4.The learned counsel appearing for the private respondents would submit that really no public interest is involved for the reason that the petitioner is also a beneficiary and he has also encroached upon some portion of the land and would further add that the said land in question has been classified as Natham and as such, the provisions of the Tamil Nadu Land Encroachment Act, 1905 cannot be invoked and prays for dismissal of this Writ Petition.

5.This Court has considered the rival submissions on either side and perused the materials available on record.

6.A perusal of the counter affidavit filed by the third respondent would reveal that apart from the petitioner, respondents 4 and 5 are also beneficiaries and they have been given three cents each. It is the specific case of the petitioner that the respondents 4 and 5 had encroached upon the land meant for communal purpose in Survey No.133/2 and put up some permanent structures. However, it is the case of the respondents 4 and 5 that the land in which alleged encroachment has been made is classified as Natham and the provisions of the Tamil Nadu Land Encroachment Act, 1905 have no application, the counter affidavit of the third respondent would also disclose that the respondents 4 and 5 were granted three cents of house site patta and they put up super structure and that apart, they have also encroached upon the land and when enquiry was made, they have stated that they are ready to vacate the land, which is the subject matter in the Writ Petition, only if all other encroachers are removed.

7.This Court, in the light of the above facts and circumstances and without going into the merits of the claim projected by the petitioner, directs the third respondent, with the help of Jurisdictional Surveyor, to cause inspection of the land admeasuring to an extent of 0.95.0 Hectares in Survey No.133/2, Dr.Ambedkar Nagar, Kuliparai Village, Thirumayam Taluk, Pudukkottai District, after putting the concerned persons on notice and survey the land and if survey reveals that there are encroachments, shall cause notice on the encroachers and thereafter take action in accordance with law for removal of the encroachments and communicate the decision taken, to the said encroachers.



8. It is made clear that the petitioner as well as respondents 4 and 5 shall extend maximum cooperation to the third respondent to do the said exercise. The said exercise ordered by this Court is to be complied with by the third respondent within a period of twelve weeks from the date of receipt of a copy of this order.

9. This Writ Petition stands disposed of accordingly. No costs.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
Office of the District Collector,
Pudukkottai District.
2. The Revenue Divisional Officer,
Pudukkottai District.
3. The Tahsildar,
Thirumayam Taluk Office,
Pudukkottai District.

+1cc to M/S.K.BAALASUNDHARAM, Advocate SR.No.40354.
+1cc to M/S.B.JAMEEL ARASU, Advocate SR.No.40425.
+1cc to Special Government Pleader in SR.No.40813.

W.P (MD) No.18530 of 2017
04.01.2018

ps
SDS/JC/SAR 1/19.01.2018/4P/7C