



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.03.2018

CORAM:

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE Mrs. JUSTICE R.THARANI

Writ Petition (MD).No.19826 of 2017

and

W.M.P. (MD)No.16097 of 2017

K.Pandian

... Petitioner

Vs.

1.The District Collector,
Dindigul District,
Dindigul.

2.The Tahsildar,
Vedasandhur Taluk,
Dindigul District.

3.Easwari
4.Thangavelu
5.Karuppasamy
6.Krishnan

... Respondents

Prayer: Writ Petition is filed under Article 226 of Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records in pursuant to the impugned order issued by the second respondent dated 12.10.2017, which was affixed in the petitioner's building on or after 16.10.2017 and quash the same and consequently forbearing the respondents and their subordinates or agents in any manner from disturbing petitioner's peaceful possession and enjoyment of his land in Survey No.318 by converting the Odai situated in Survey NO.319 as Cart track in Mamarathupatti, Sukkampatti Village, Vedasandhur Taluk, Dindigul District.

For Petitioner

: Mr.J.Parekhkumar

For Respondents 1 and 2

: Mr.D.Muruganantham

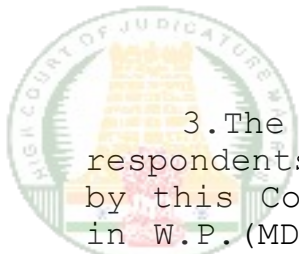
Additional Government Pleader

ORDER

(Order of the Court was made by **T.S.SIVAGNANAM, J**)

Heard Mr.J.Parekhkumar, learned counsel appearing for the petitioner and Mr.D.Muruganantham, learned Additional Government Pleader appearing for the respondents 1 and 2.

2.The petitioner has filed this writ petition, challenging the order passed by the second respondent dated 12.10.2017 passed under Section 6 of the Tamil Nadu Encroachment Act.



3.The learned Additional Government Pleader appearing for the respondents 1 and 2 would submit that in terms of direction issued by this Court in the earlier writ petition filed by the petitioner in W.P.(MD)No.16079 of 2017 dated 24.08.2017, the proper procedure was followed and encroachment has been removed by demolishing the semi permanent structure put up by the petitioner. The learned Additional Government Pleader would submit that Survey No.319 was subdivided into Survey No.319/1 classified as Natham and Survey No.319/2 classified as cart tract. The odai runs in Survey No.318. After following due procedure and after conducting a thorough survey, it was ascertained that the petitioner encroached into Survey No.319/2 which was a cart tract. Since it is stated that the encroachment has already been removed, in a writ petition under Article 226 of the Constitution, we cannot adjudicate disputed question of facts.

4.The learned counsel for the petitioner reiterates that Survey No.319 has not been classified as cart tract and the construction put up by the petitioner is within his patta land. The petitioner, along with two others, has filed O.S.No.153 of 2015 before the learned District Munsif, Virudhunagar, wherein the first defendant is the village panchayat. Considering all these facts and taking note of the submission made by the learned Additional Government pleader that already encroachment has been removed, the question of adjudicating upon the correctness of the impugned order under Section 6 of the said Act does not arise.

5.For the above reasons, the writ petition fails and is dismissed. However, if the petitioner is desirous of preferring an appeal before the District Collector under Section 10 of the Tamil Nadu Encroachment Act, he is at liberty to do so. In the event, the petitioner files an appeal, the period from 26.10.2017 till the date of receipt of a certified copy of this order, shall be excluded for computing limitation. No costs. Consequently, W.M.P.(MD)No.16097 of 2017 is closed.

Sd/-
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1.The District Collector,
Dindigul District, Dindigul.

2.The Tahsildar,
Vedasandhur Taluk, Dindigul District.

+1CC M/S.J.PAREKH KUMAR, ADVOCATE, SR NO.54614

+1CC TO SPECIAL GOVERNMENT PLEADER, SR NO.54603

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