



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.11.2018

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS.JUSTICE R.THARANI**

W.P.[MD].No.20762 of 2018

and

W.M.P.(MD).No.18519 and 18520 of 2018

P.Lasar

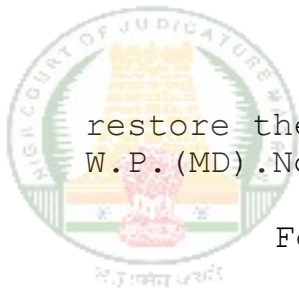
: Petitioner

Vs.

- 1.The District Collector,
Tiruchirappalli,
Tiruchirappalli District 620 001.
- 2.The Revenue Divisional Officer,
Lalgudi, Tiruchirappalli 621 601.
- 3.The Revenue Tahsildar,
Manachanallur, Tiruchirappalli 621 005.
- 4.Tmt.Renuga Devi,
The Revenue Tahsildar,
Manachanallur, Tiruchirappalli 621 005.
- 5.The Assistant Director of Land and Survey,
Trichy 620 001.
- 6.Irudhayam
- 7.Velankanni
- 8.J.Aron
- 9.J.Anthonysamy
- 10.Simiyon
- 11.Sagayaraaj
- 12.Thomai Ammal
- 13.MiLtonraj
- 14.Leo @ Joseph
- 15.Arockiaraj
- 16.Lucas

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the third respondent in Na.Ka.Aa1/913/2018, dated 26.04.2018 quash the same and consequently directing the respondents 1 to 3 herein to remove the encroachment made by the respondents 6 to 16 herein in Survey Nos.556/1 and 557/1 situated in Irungalur Post, Manachanallur Taluk, Trichy District and



restore the same for public utility as per order dated 05.03.2018 in W.P. (MD). No.4550 of 2018 on the file of this Court.

For Petitioner : Mr.S.C.Herold Singh
For Mr.N.Marimuthu
For Respondents : Mr.R.Sethuraman
Special Government Pleader

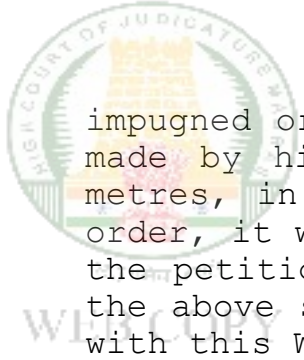
ORDER

[Order of the Court was made by **R.SUBBIAH, J.**]

The petitioner has come forward with the present Writ Petition challenging the order passed by the third respondent in Na.Ka.Aa1/913/2018, dated 26.04.2018 and for a direction to the respondents 1 to 3 herein to remove the encroachment made by the respondents 6 to 16 herein in Survey Nos.556/1 and 557/1 situated in Irungalur Post, Manachanallur Taluk, Trichy District and restore the same for public utility, as per order dated 05.03.2018 in W.P. (MD). No.4550 of 2018 on the file of this Court.

2. The case of the petitioner is that he is a resident of Mela Street, Irungalur Post, Manachanallur Taluk, Trichy District. The respondents 6 to 16 are residing in the same locality and they have encroached upon the public pathway in Survey Nos.556/1 and 557/1 by constructing houses and putting up tin sheets, thereby denying free access for ingress and egress to the residents. The Government, vide G.O. (Ms). No.540, Revenue LD(6) (2) Department, dated 04.12.2014, had constituted a Committee, appointing the Tahsildar concerned as the competent authority for removal of encroachments. The petitioner submitted a representation dated 02.02.2018 to the respondents 1 to 3 herein enclosing the revenue record, adangal, etc, requesting the official respondents to remove the encroachment made by the respondents 6 to 16 on public road in Survey Nos.556/1 and 557/1. Since no action was forthcoming, the petitioner filed W.P. (MD). No.4550 of 2018 seeking a Writ of Mandamus, directing the respondents 1 to 3 therein to remove the encroachment made by the private respondents, who are the respondents 6 to 16 herein, in Survey Nos.556/1 and 557/1, situated in Irungalur Post, Manachanallur Taluk, Trichy District and restore the same for public pathway.

3. A Division Bench of this Court, by order dated 05.03.2018, while disposing of the said Writ Petition, directed the third respondent therein to conduct a survey of the entire area and based on the survey, encroachment, if any, alleged to have been made by the private respondents, shall be removed, after due notice to the parties concerned. However, the third respondent, without conducting any survey or earmarking the encroachments made by the respondents 6 to 16 in Survey Nos.556/1 and 557/1, situated in Irungalur Post, Manachanallur Taluk, Trichy District, has chosen to pass the

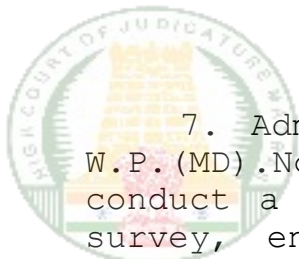


impugned order, directing the petitioner to remove the encroachment made by him in Natham Poramboke land to an extent of 18 square metres, in which he had constructed compound wall. In the impugned order, it was made clear that if the encroachment was not removed by the petitioner, action will be initiated to remove the same. Under the above stated circumstances, the petitioner is before this Court with this Writ Petition.

4. Today, when the Writ Petition is taken up for consideration, it is submitted by the learned counsel appearing for the petitioner that this Court had specifically directed the official respondents to conduct survey, by issuing notices to the parties concerned. However, the third respondent, without conducting survey and with mala fide intention in order to favour the respondents 6 to 16, has passed the impugned order, branding the petitioner as an encroacher. The petitioner has also filed a Miscellaneous Petition seeking appointment of Advocate Commissioner to inspect, survey and measure the properties in Survey Nos.556/1 and 557/1 situated in Irungalur Post, Manachanallur Taluk, Trichy District, with the help of the fifth respondent herein. Thus, the learned counsel for the petitioner sought for setting aside of the impugned order.

5. Countering the above submission, the third respondent has filed a counter affidavit stating that pursuant to the orders of this Court dated 05.03.2018, made in W.P.(MD).No.4550 of 2018, the lands in Survey Nos.556/1 and 557/1, situated in Irungalur Post, Manachanallur Taluk, Trichy District, were surveyed by the Revenue Officials on 24.04.2018 in the presence of the petitioner and the respondents 6 to 16 herein, in which it came to light that the petitioner has encroached upon about 00.018 square metres of land in Survey No.557/1. The petitioner has made objection and requested re-survey of the land. Accordingly, on 25.07.2018, the above lands were once again re-surveyed, in which it was found that in Survey No.556/1, a metal road [Thar Road] has been laid and there are no encroachments. Apart from the above, the land in Survey No.557/1 was surveyed along with the adjacent lands in Survey Nos.557/2, 4, 5, 8, 9,10,11,12,13, 14, 15 and 16 and found that the above lands belong to private pattathars. Similarly, the lands in Survey Nos.558/9, 10, 12, 16, 17, 18, 19 and 20, which abet the pathway in Survey No.557/1, were also surveyed, in which it came to light that the petitioner has encroached upon the land in Survey No.557/1, by putting up a compound wall with hollow blocks in the pathway leading to Survey Nos.557/16 and 558/13. Thus, the adjacent land owners objected to the encroachment made by the petitioner, which resulted in quarrel and scuffle, culminating into a criminal case against the grandson of the petitioner. Thus, according to the official respondents, the respondents 6 to 16 are not encroachers and in fact, as per the records, the petitioner is an encroacher.

6. We have considered the above submissions and perused the materials available on record.



7. Admittedly, this Court, by order dated 05.03.2018 made in W.P.(MD).No.4550 of 2018, directed the third respondent therein to conduct a survey of the entire area in question and based on the survey, encroachment, if any, stated to have been made by the private respondents, was directed to be removed, after due notice to the parties concerned. In pursuance of the above order, the lands in Survey Nos.556/1 and 557/1, situated in Irungalur Post, Manachanallur Taluk, Trichy District, were surveyed by the Revenue Officials on 24.04.2018 in the presence of the petitioner and the respondents 6 to 16 herein, in which it came to light that the petitioner has encroached upon about 00.018 square metres of land in Survey No.557/1. Since the petitioner has made objection and requested re-survey of the land, on 25.07.2018, the above lands were once again re-surveyed, in which it was found that in Survey No.556/1, a metal road [Thar Road] has been laid and there are no encroachments. In addition to the above, the adjacent lands were also surveyed and found that the petitioner has encroached upon the land in Survey No.557/1, by putting up a compound wall with hollow blocks in the pathway leading to Survey Nos.557/16 and 558/13 and the respondents 6 to 16 are not encroachers. On the contrary, it is the case of the petitioner that he is not an encroacher and the respondents 6 to 16 are the encroachers.

8. The above question, in our considered view, is a disputed question of fact, which cannot be gone into in this Writ Petition under Article 226 of the Constitution of India. At this juncture, we are constrained to state that a Writ Court cannot be converted into a Civil Court so as to give findings on the disputed questions of fact. The scope of judicial review under Article 226 of the Constitution of India is very limited in this regard. It is well settled by the Hon'ble Supreme Court in a catena of decisions that it is none of business of a Writ Court to go into the disputed questions of fact and to make an attempt to resolve the same. Thus, the Writ Petition stands dismissed, giving liberty to the petitioner to work out his remedy in the manner known to law. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar()

/True Copy/

Sub Assistant Registrar(CS-I)

To
1.The District Collector,
Tiruchirappalli,
Tiruchirappalli District 620 001.

2.The Revenue Divisional Officer,
Lalgudi, Tiruchirappalli 621 601.



3. The Revenue Tahsildar,
Manachanallur, Tiruchirappalli 621 005.

4. The Assistant Director of Land and Survey,
Trichy 620 001.

+1cc to Mr.N.Marimuthu Advocate in SR.No.97543

ORDER MADE IN
W.P. [MD] .No.20762 of 2018
29.11.2018

NB

PSSKN SAR1 03.12.2018 5P 6C