



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.03.2018

CORAM:

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

W.P(MD)No.4057 of 2016

N.Vellaichamy : Petitioner

Vs.

1.The District Collector,
Sivagangai District,
Sivagangai.

2.The Tahsildar,
Thiruppathur Taluk,
Sivagangai District.

3.Kalladiyan

4.Rajendran

5.Karuppaiah

6.Sittal

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus directing the respondent 3 to 6 in Survey No.697/30 of Vanjinipatti, 33, A.Thekkur Group, Thiruppathur Taluk, Sivagangai District based on the representations of the petitioner dated 12.10.2015 and 06.02.2016.

For Petitioner : Mr.S.Ayyanar Premkumar

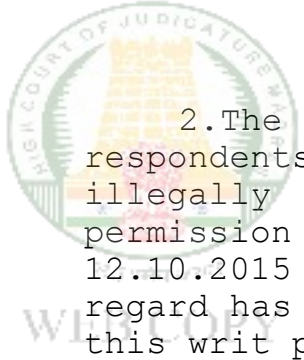
For Respondents 1 & 2 : Mr.M.Murugan
Government Advocate

For Respondents 3 to 6 : Mr.S.Arivalagan

ORDER

[Order of the Court was made by M.SATHYANARAYANAN,J.]

The petitioner claims to be the resident of Vanjinipatti, Thiruppathur Taluk, Sivagangai District, came forward to file this writ petition alleging that the land admeasuring to an extent of 0.07.25 acres in Survey No.493/3 of Vanjinipatti village is classified as "Pathway Poramboke" and it has been changed in the Natham Resurvey as Survey No.697/30 and the said pathway is being used by the villagers to reach the public road.



2.The grievance expressed by the petitioner is that the private respondents 3 to 6 has encroached upon the said public road and illegally put up superstructures without obtaining any planning permission or license whatsoever and the representation dated 12.10.2015 and 06.02.2016, submitted by the petitioner in that regard has failed to invoke any kind of response and therefore, file this writ petition.

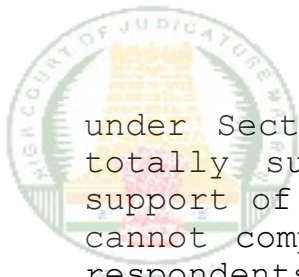
3.The writ petition was entertained on 26.02.2016 and notices were ordered.

4.The learned counsel appearing for the petitioner would submit that the third respondent herein on an earlier occasion in W.P.(MD) No.3657 of 2014, without impleading the petitioner, prayed for issuance of Writ of Mandamus to consider and dispose of his representation dated 04.02.2014, wherein he alleged encroachment and this Court vide order dated 09.07.2013, has directed the petitioner therein to furnish a copy of the said representation dated 04.02.2014, to the third respondent namely, the Tahsildar, Thiruppathur Taluk, Sivagangai District, who in turn was directed to consider and dispose of the same within a stipulated time.

5.The learned counsel appearing for the petitioner would submit that the respondents 3 to 5 had also filed W.P.(MD) Nos.103 to 105 of 2016, challenging the proceedings of the Village Administrative Officer of Thekkur Group, Thiruppathur Taluk, Sivagangai District, initiated under the provisions of the Tamil Nadu Land Encroachment Act, 1901 and vide common order dated 07.09.2017, the writ petitions were disposed of and the writ petitioners therein had been granted liberty to submit their responses and the encroachments which have been made over and above the construction put up by the Government was directed to be removed and the second respondent without understanding the scope and purport of the order vide his proceedings in Na.Ka.No.A9/7359/2017, dated 01.12.2017, has merely indicated that there is no necessity to remove the encroachments and prays for appropriate orders.

6.The learned Government Advocate appearing for the official respondents would submit that in the light of the common order dated 07.09.2017, made in W.P.(MD) Nos.103 to 105 of 2016, the second respondent thought fit not to remove the encroachments for the reason that the residential housing put up by the private respondents need not be removed.

7.The learned counsel appearing for the private respondents has drawn the attention of this court to the counter affidavit filed in W.P.(MD) No.3657 of 2014, by the fourth respondent therein, and would submit that it is only the petitioner who had encroached upon the public road and further pointed out by drawing the attention of this Court to the typed set of documents that the petitioner is arrayed as second accused in Crime No.44 of 2014, registered by the Kandavarayanpatti police station for the commission of the offences



under Sections 120(b), 465, 468 & 473 and the said fact has been totally suppressed by the petitioner in the affidavit filed in support of this petition and the writ petitioner being an encroacher cannot complain about the alleged encroachment made by the private respondents and prays for dismissal of this writ petition.

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8.This Court has considered the rival submissions and perused the materials placed before it.

9.A perusal of the affidavit filed in support of the present writ petition would disclose that the petitioner did not disclose the fact of registration of the said FIR and the only explanation offered by him is that in the written submission, the said fact has been brought to the notice of this Court. In the considered opinion of this Court, the written submission cannot be treated as a sworn affidavit and the petitioner is expected to disclose the facts in the affidavit and unfortunately, the petitioner has failed to disclose it.

10.It is also to be noted at this juncture that the second respondent without understanding the scope and purport of the common order dated 07.09.2007 in W.P.(MD)Nos.103 to 105 of 2016, despite extracting the order, merely said that the residential housing put up by the respondents need not be removed.

11.In the considered opinion of this Court, it is nothing but a shabby way of disposal of the representation submitted by the petitioner for the reason that this Court in the above cited common order has specifically indicated that if the private respondents had encroached upon the cement road, the same is liable to be removed.

12.In the result, the writ petition is disposed of and the second respondent with the help of the jurisdictional Surveyor shall cause inspection of the land in Survey No.697/30 of Vanjinipatti village, 33-A Thekkur Group, Thiruppathur Taluk, Sivagangai District, after putting the petitioner as well as the private respondents on notice, within a period of four weeks from the date of receipt of a copy of this order and depending upon the result of the survey, shall follow the due process of law and remove the encroachments after putting the encroachers on notice and the said exercise is to be carried out within a further period of eight weeks thereafter, and decision taken in that regard shall be communicated to the petitioner, private respondents as well as to other encroachers if any. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-

Assistant Registrar(CSIII)

/True Copy/

Sub-Assistant Registrar



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1.The District Collector,
Sivagangai District,
Sivagangai.

2.The Tahsildar,
Thiruppathur Taluk,
Sivagangai District.

+One cc to Mr.S.Ayyanar Prem Kumar, Advocate, SR.No.53563

+One cc to The Special Government Pleader, SR.No.53342

MR
RL/5C/4p/SKN/RSK/SAR1/3/4/2018

W.P (MD) No.4057 of 2016

05.03.2018