

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:02.01.2019

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAN

W.P.No.31273 of 2005
and
W.M.P.No.34267 of 2005

M.Kailasam

... Petitioner

Vs

1.The District Collector,
Salem District,
Salem.

2.The Tahsildar,
Mettur Taluk,
Mettur, Salem District.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus forbearing the respondents 1 and 2 their men, or agents from in any manner demolishing and interfering with the peaceful possession and enjoyment of the petitioner's land, building and premises admeasuring 608 sq.ft situated in Survey Bi,38/4C, Olaipatti Village, Mettur Taluk, Salem District.

For Petitioner : M/s. T.Saikrishnan

For Respondents : Mr.G.B.Rajesh
Government Advocate
For R.1 and R.2

O R D E R

The relief sought for in the present writ petition is to forbear the respondents 1 and 2, their men and agents from in any manner demolishing and interfering with the peaceful possession and enjoyment of the petitioner's land, building and premises admeasuring 608 sq.ft situated in Survey No.Bi,38/4C, Olaipatti Village, Mettur Taluk, Salem District.

2. The learned counsel for the writ petitioner states that the property described in the writ petition was originally classified as house site plot and belonged to the writ petitioner. The writ petitioner purchased the said plot from one Smt.Ranjitham and possessed the title. The writ petitioner constructed a house in the said property. However, the respondents are interfering with the peaceful possession and enjoyment of the writ petitioner in respect of his residential premises and therefore, the writ petitioner is constrained to move the present writ petition.

3. The learned Government Advocate appearing on behalf of the respondent based on the instructions issued by the Tahsildar, Mettur informed this Court that the writ petitioner has encroached the portion of the land which is classified as "Kamaneri", which is a water body. Therefore, the writ petitioner has encroached the water body which is the Government Poramboke land and therefore, a notice was issued to the writ petitioner under the provisions of the Encroachment Act during the year 2005. However, the writ petitioner has approached this Court by filing the present writ petition and all further actions are kept in abeyance on account of the pendency of the present writ petition.

4. This Court is of an opinion that encroachment in any form in water body and water resources ought to be evicted without any leniency. The water bodies and water resources are to be preserved and the Authorities Competent are bound to monitor all such encroachments in the interest of the public at large. On account of large scale encroachments in water bodies, water resources and Government land, the rights of all other citizens are infringed and therefore, the Competent Authorities are bound to evict all such encroachments. Even the Apex Court emphasised that encroachments in water bodies and water resources ought to be dealt with iron hand and there cannot be any leniency and all such encroachments ought to be evicted by following the procedures contemplated under the provisions of the Tamil Nadu Land Encroachment Act, 1905 and the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007.

5. In the present case on hand, the learned Government Advocate brought to the notice of this Court that a portion of the land classified as "Kamaneri" has been encroached upon by the writ petitioner. In this regard, a notice was issued to the writ petitioner during the year 2005 itself. However, further actions are kept in abeyance on account of the pendency of the present writ petition. In this view of the matter, the respondents are directed to ascertain the facts once again with reference to the files and initiate action for eviction of all such encroachers in water bodies, water resources and Government

Poramboke lands.

6. While initiating action, a fresh notice is to be issued to the writ petitioner setting out the details of revenue records and on receipt of any explanation/objection from the encroachers, a final order can be passed and accordingly, actions can be initiated for evicting all such encroachers. It is clarified that all such encroachers in that locality in respect of water bodies and water resources ought to be evicted by following the procedures.

7. Accordingly, the writ petitioner has not established any acceptable ground for the purpose of grant of relief as such sought for in the present writ petition and the respondents are directed to initiate action for eviction of all such encroachments in that locality by following the procedures contemplated within a period of 12 weeks from the date of receipt of a copy of this order. Accordingly, the writ petition stands disposed of. No Costs. Consequently, connected miscellaneous petition is closed.

Pkn

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The District Collector,
Salem District,
Salem.

2. The Tahsildar,
Mettur Taluk,
Mettur, Salem District.

+1cc To M/s.Sai & Bharath, Advocates, Sr.No.195/19
+1cc To the Govt.Pleader, SR.NO.526/19.

W.P.No. 31273 of 2005

kak(05/02/2019)