

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:03.01.2019

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE Mr. JUSTICE R.PONGIAPPAN

W.P.No.31506 of 2016 and
W.M.P.No.27346 of 2016

S.Kanthamani .. Petitioner
Vs.

1.The District Collector,
Villupuram District,
Villupuram.

2.The Tahsildar,
Thirukovilur Taluk,
Villupuram District.

3.K.Sakthivel ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the Respondents 1 and 2 to take necessary action against the 3rd Respondent to forbearing from in any manner encroach and constructing a marriage hall into the petitioner's property, comprised in Survey Nos.34/5 - 0.34 Cents (Patta No.47) and S.No.34/6D - 0.58 Cents (Patta No.28) and consequentially direct the 3rd Respondent to remove such encroachment on the basis of Petitioner's representation dated 06.05.2016.

For Petitioner : Mr.R.Thanjan

For Respondents 1 & 2 : Mr.S.N.Parthasarathy
Government Advocate

For 3rd Respondent : Served - No appearance

O R D E R

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

Heard the Learned Counsel for the Petitioner as well as the Learned Government Advocate for Respondents 1 and 2. No counter is filed on behalf of the Respondents 1 and 2. Court Notice for the 3rd Respondent was served as early as on 19.09.2016.

2.Today when the matter was come up for hearing, there is no representation on behalf of the 3rd Respondent either in person or through Learned Counsel.

3.According to the Petitioner, his great grandfather Thopppa Udayar had three sons and his grandfather Thambusamy Udayar is one among the legal heirs of late Venugopal and the Petitioner's great grandfather Thopppa Udayar and his grandfather Thambusamy Udayar purchased some properties situated in Survey Nos.34/5 - 0.34 Cents (Patta No.47) and S.No.34/6D - 0.58 Cents (Patta No.28) among other properties by means of a registered Sale Deed dated 26.11.1946 during his lifetime and the said properties were in possession and in enjoyment as absolute owner by paying all Government taxes and other charges.

4.The Petitioner, being the legal heir of Venugopal Udayar, is in possession and enjoyment of the properties as absolute owner along with other legal heirs by paying all Government taxes and other charges by means of succession.

5.The grievance of the Petitioner is that his grandfather and his father were not in a position to manage the vast and extensive properties owned by them and taking advantage of the same, some persons had encroached certain properties viz., the following properties in Survey No.34/5 measuring an extent of 0.34 Cents of land and in Survey No.34/6 measuring an extent of 0.58 Cents of land in Patta No.28 and despite the Petitioner's objection along with his sisters and brother, the 3rd Respondent/President of Kadiyar Village Panchayat had encroached into the aforesaid properties in the capacity as 'Panchayat President' with a view to grab and constructs a Marriage Hall for use of public, particularly to get credit from the Adi Dravida people and commenced such encroachment activities even though obstructed stoutly by him and his family members.

6.The primordial plea taken on behalf of the Petitioner is that no one has any right to interfere or acquire more particularly encroach into an individual property viz., the Petitioner's property and without adopting any land acquisition proceedings, with the instigation and funding of the Respondents 1 and 2, had encroached and commenced the construction of Thirumana Mandapam by the 3rd Respondent illegally into the Petitioner's property, which is nothing but an usurpation of 'Right to Property' enshrined as per Article 300 A of the Constitution of India.

7.At this stage, the Learned Counsel for the Petitioner emphatically points out that the Petitioner had approached the

Respondents 1 to 3 and also sent several representations, viz., 01.03.2016, 04.04.2016 and 06.05.2016 respectively to the Respondents 1 and 2 including the Block Development Officer, Thirukovilur and also representation being addressed to the Hon'ble Chief Minister of Tamil Nadu and that there was no response from anyone of them and furthermore, no steps were taken against the 3rd Respondent so far.

8. Since the Respondents 1 and 2 had not taken any action against the 3rd Respondent and also not replied to his earlier three representations as stated aforesaid, the Petitioner has filed the present Writ Petition seeking the relief of Mandamus in directing the Respondents 1 and 2 to take necessary action against the 3rd Respondent in restraining him from in any manner encroaching and constructing a Marriage Hall into their property comprised in Survey Nos.34/5 - 0.34 cents as per Patta No.47 and Survey No.34/6D measuring an extent of 0.58 Cents (Patta No.28) and resultantly, to direct the 3rd Respondent to remove such encroachment on the basis of his representation dated 06.05.2016.

9. At this juncture, this Court pertinently points out that the Petitioner, in her representation dated 04.04.2016 addressed to the Hon'ble Chief Minister of Tamil Nadu (Special Cell), Chennai - 600 009, had among other things stated that '.... subsequent to the death of her father, due to family circumstances, she was not able to manage the lands single-handedly, which was taken advantage of by some Dalit people in the village and encroached into their lands by constructing thatched houses and thus swelling her problems'. As a matter of fact, the Petitioner had averred in the said representation dated 04.04.2016 that she was not to oppose them and her objections were in vain.

10. Apart from that, one of the Encroachers had also started laying foundation for construction of Marriage Hall in the property and because of the encroachments made by the Dalit people, she could not continue her agriculture and her survival was at stake etc. Before a representation dated 04.04.2016, the Petitioner had addressed a representation to the 2nd Respondent/Tahsildar, Thirukovilur Taluk, Villupuram District on 23.03.2016 seeking necessary action against the encroachment and construction thereon into their family property. Lastly, the Petitioner had addressed a detailed representation to Respondents 1 to 3 on 06.05.2016 with a request to the 1st Respondent/District Collector, Villupuram and the 2nd Respondent/Tahsildar, Thirukovilur Taluk, Villupuram District to take suitable and immediate action against the 3rd Respondent/President, Kadiyur Panchayat, Villupuram District for illegal encroachment made in her property and put up

construction of a Marriage Hall thereon.

11. Even though the Petitioner had addressed three representations dated 23.03.2016, 04.04.2016 and 06.05.2016 to the concerned Authorities, yet, nothing tangible has been done in the subject matter in issue and in this regard, the Petitioner, as an 'Affected Person', has projected the present Writ Petition before this Court.

12. In this connection, it is not out of place for this Court to make a significant mention that the Petitioner, in her representation dated 23.03.2016, had in a crystalline fashion mentioned that her lands were encroached by one Balakrishnan of Kadiyar Village by putting up thatched houses and further, she had stated that one of the Encroachers viz., the 3rd Respondent had started laying foundation for construction of Marriage Hall in their property etc. The simpliciter prayer/request made in the aforesaid representations is that the encroachments were made in the form of construction of houses by Dalit people and a Marriage Hall was constructed into their family property.

13. It appears that the Petitioner's Advocate had addressed a communication dated 06.05.2016 to the Respondents 1 to 3 seeking redressal of Petitioner's grievances in the form of a representation dated 06.05.2016 for taking necessary action.

14. The pith and substance of the contents of the three representations of the Petitioner unerringly points out that some encroachments were made into her property by means of putting up construction of thatched houses and Marriage Hall by certain community people and especially the 3rd Respondent putting up a Marriage Hall. Obviously, the dispute of the Petitioner pertaining to a properties in question is of a Civil Nature, in the considered opinion of this Court.

15. Even though a strenuous plea is taken on behalf of the Petitioner that the Petitioner's three representations had fell into a deaf years resulting in no positive action was taken by the concerned Authorities by and large and also unerringly it is for the concerned Authorities to act on the representations of the Petitioner one way or other. Even though the Petitioner, as an aggrieved person, has come to this Court for the failure/inaction on the part of the Respondents 1 and 2 to act in the subject matter in issue, yet, this Court is of the considered view that the facts centering around the Petitioner's representations are not only mixed Question of Facts but also touches upon the Law. Therefore, this Court is of the earnest opinion that the controversies involved in the present Writ Petition are to be adjudicated by the Competent Civil Court in a proper manner.

16.As such, this Court, without expressing any opinion on the merits of the matter and also, not delving deep into the subject matter in issue, directs the Petitioner to approach the Competent Civil Forum, by filing necessary Civil Suit seeking necessary prayer including the relief of 'Mandatory Injunction' as well as the appointment of Advocate Commissioner by means of filing an Interlocutory Application and to seek redressal of grievances in accordance with Law. Viewed in that perspective, this Court disposes of the present Writ Petition, by directing the Petitioner to approach the Competent Civil Forum for removal of purported encroachments made in the subject properties, by raising all Factual and Legal pleas in the subject matter in issue (if the Petitioner is so advised). In fact, the disputed Questions of Facts/complicated Legal issues are involved in a particular subject matter in issue, which require detail rumination and also taking of necessary evidence by means of deposition of witnesses concerned and marking of oral documents, then, the proper Forum for the dissatisfied/affected/ aggrieved person is to approach the Competent Civil Court.

17.In view of the above observations, the Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

Sgl
To

1. The District Collector,
Villupuram District, Villupuram.

2.The Tahsildar,
Thirukovilur Taluk,
Villupuram District.

3.The Government Advocate,
High Court, Madras.

+1 cc to The Government Pleader, SR.No.1029

W.P.No.31506 of 2016

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CSL/01.02.2019