

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2019

CORAM :

THE HON'BLE DR.VINEET KOTHARI, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.Nos.3927, 11793, 11794, 11795, 12328, 12329, 31744, 31745,
31747, 31748, 31750, 31787 and 31788 of 2017

1 AMMAN NAGAR - NARAYANA NAGAR
RESIDENT WELFARE ASSON. REP. BY PRESIDENT K.
THANGAVEL 1R2 PATTALATHAR THOTTAM AMMAN
NAGAR KOMARAPALAYAM 638 183 NAMAKKAL DT.
... PETITIONER in WP No.3927 of 2017

1 NATRAYAN ... PETITIONER in WP No.11793 of 2017

1 S.PERUMAL ... PETITIONER in WP No.11794 of 2017

1 K.DUR AISAMY ... PETITIONER in WP No.11795 of 2017

1 N.REVATHI ... PETITIONER in WP No.12328 of 2017

1 P.ARTHANARISAMY ... PETITIONER in WP No.12329 of 2017

1 P.LAKSHMIPRABA ... PETITIONER in WP No.31744 of 2017

1 K.S.PALANISAMY ... PETITIONER in WP No.31745 of 2017

1 ELANGO ... PETITIONER in WP No.31747 of 2017

1 P.RAMESH ... PETITIONER in WP No.31748 of 2017

1 N.SUNDARARAJ ... PETITIONER in WP No.31750 of 2017

1 S.MUTHUSAMY ... PETITIONER in WP No.31787 of 2017

1 M.THIRULOGACHANDRAN ... PETITIONER in WP No.31788 of 2017

Vs.

1 THE DISTRICT COLLECTOR
NAMAKKAL DISTRICT NAMAKKAL.

- 2 THE TAHSILDAR
KOMARAPALAYAM TALUK NAMAKKAL DISTRICT.
- 3 THE COMMISSIONER
KOMARAPALAYAM MUNICIPALITY KOMARAPALAYAM
NAMAKKAL DISTRICT.
- 4 THE ASSISTANT EXECUTIVE
ENGINEER CAUVERY EAST CANAL IRRIGATION
DIVISION PUBLIC WORKS DEPARTMENT ETHIRMEDU
THATTANKUTTAI VILLAGE KOMARAPALAYAM TALUK
NAMAKKAL DISTRICT.
- 5 THE ASSISTANT ENGINEER.
PUBLIC WORKS DEPARTMENT METTUR CANAL
DIVISION KOMARAPALAYAM NAMAKKAL DISTRICT.
- 6 P.RAMESH
- 7 SUNDARARAJ
- 8 GANESAN
- 9 SAKTHIVEL
- 10 MEIYYAPPAN
- 11 ANTHONIMUTHU
- 12 S.PALANISAMY
- 13 MUTHU SARADHA
- 14 KAMALA
- 15 MUTHUSAMY
- 16 RADHAKRISHNAN
- 17 CHANDRA
- 18 M.GANDHAMANI
- 19 M.DANASEKARAN
- 20 R.GURUMURTHY
- 21 ELANGO

22 A.CHINNUSAMY
23 K.RAMASAMY GOUNDER
24 K.K.MATHIVANAN
25 S.PERUMAL
26 VASANTHAGOKILAM
27 K.THANGAVELU
28 K.KANDASAMY
29 K.KALIANNAN (DECEASED)
30 YUVARAJ
31 LAKSHMI
32 SAMBURRANI
33 CHANDIRA
34 YUVARAJ

(R31 TO R34 ARE SUBSTITUTED AS
LRS OF DECEASED R29 K.KALIANNAN
AS PER ORDER DT.12.07.18 PASSED IN WP.3927/17)

..Respondents in W.P.No.3927/2017.

1 THE DISTRICT COLLECTOR
NAMAKKAL DISTRICT.
2 THE REVENUE TAHSILDAR
TALUK OFFICE KOMARAPALAYAM

3 THE COMMISSIONER
KOMARAPALAYAM MUNICIPALITY KOMARAPALAYAM
NAMAKKAL DISTRICT.
..R1 to R3 in W.P.Nos.11793,
11794, 11795, 12328, 12329, 31744,
31745, 31747, 31748, 31750, 31787 &
31788/2017.

4 THE ASSISTANT ENGINEER
P.W.D. W.R.D. METTUR CANAL SECTION
KOMARAPALAYAM NAMAKKAL DISTRICT
..4th Respondent in W.P.No.12329/2017

4 THE ASSISTANT EXECUTIVE
ENGINEER CAUVERY EAST CANAL IRRIGATION
DIVISION PUBLIC WORKS DEPARTMENT ETHIRMEDU
THATTANKUTTAI VILLAGE KOMARAPALAYAM
NAMAKKAL DT.

5 THE ASSISTANT ENGINEER
PUBLIC WORKS DEPARTMENT METTUR CANAL
DIVISION KOMARAPALAYAM NAMAKKAL DISTRICT
..R4 & R5 in W.P.Nos.31744, 31745,
31747, 31748 & 31750/2017.

Writ Petitions under Article 226 of the Constitution of India praying that in these circumstances stated therein and in the respective affidavits filed therewith the High Court will be pleased to issue a Writ of Certiorari

(1)directing the respondents 1 to 5 to take action against the encroachers who have illegally occupied the entire Mettur Branch Irrigation Canal and the adjoining Public Road comprised in S.F. Nos. 83 to 85 and 102 of Komarapalayam Agraharam Village, Ward Nos. 14 to 16 and restore the said Canal and Road to its original position, pursuant to the orders dated 15.06.2015, 12.07.2016 passed by the 3rd respondent and also the orders dated 26.02.2015, 09.04.2015 and 05.05.2015, 27.01.2016 passed by the 5th respondent(in W.P.No.3927/2017)

(2) issue a Writ, order or direction specifically Writ in the nature of Writ of Mandamus forbearing the 3rd respondent from initiating any action on the basis of his notices dated 04.04.2016 in Na.Ka. No. 2879 / 2006 / A2 by considering petitioners representation dated 02.05.2017(in WP No.11793 of 2017)

(3)issue a Writ, order or direction specifically Writ in the nature of Writ of Mandamus forbearing the 3rd respondent from initiating any action on the basis of his notices dated 04.04.2016 in Na.Ka. No. 2879 / 2006 /A2 by Considering petitioners representation dated 02.05.2017(in WP No.11794 of 2017)

(4)forbearing the 3rd respondent from initiating any action on the basis of his notices dated 04.04.2016 in Na.Ka. No. 2879 / 2006 / A2 by considering petitioners representation dated 02.05.2017(in WP No.11795 of 2017)

(5)calling for the records pertaining to the impugned notices issued by the 3rd respondent in Na.Ka.No. A2/ 3400/2014 dated 24.04.2017 and quash the same, and directing to respondents by

considering petitioners representation dated 05.05.2017(in WP No.12328 of 2017)

(6)calling for the records pertaining to the impugned notice issued by issued by the respondents 3 in Na.Ka. No.A2/ 3400/ 2014 dated 24.04.2017 Form III (Sub Rule (1) of Rule 6 dated 05.05.2017 passed by 4th respondent respectively and quash the same and direct the respondents by considering petitioners representation dated 05.05.2017(in WP No.12329 of 2017)

(7)issue an order of Writ or direction or order in a nature of a Writ of Mandamus forbearing the respondents 1 to 5 from evicting the petitioner without conducting re-survey by the respondents by fixing the boundaries for canal Poramboke based on the original revenue records in respect of the land comprised in Pymasi No.126/A, to an extent of 1637 1/2 Sq.ft., and situate at Agraharam Village, Komarapalayam Taluk, Namakkal District(in WP No.31744 of 2017)

(8) issue an order of Writ or direction or order in a nature of a Writ of Mandamus forbearing the respondents 1 to 5 from evicting the petitioner without conducting re-survey by the respondents by fixing the boundaries for canal Poramboke based on the original revenue records in respect of the land comprised in Pymasi NO.89, to an extent of 2737 Sq.ft., and situate at Agraharam Village, Komarapalayam Taluk, Namakkal District(in WP No.31745 of 2017)

(9) issue an order of Writ or direction or order in a nature of a Writ of Mandamus forbearing the respondents from evicting the petitioner without conducting re-survey by the respondents by fixing the boundaries for canal Poramboke based on the original revenue records in respect of the land comprised in Survey No.126/A, in Plot No.31, situate at Agraharam Village, Komarapalayam Taluk, Namakkal District(in WP No.31747 of 2017)

(10) issue an order of Writ or direction or order in a nature of a Writ of Mandamus forbearing the respondents 1 to 5 from evicting the petitioner without conducting re-survey by the respondents by fixing the boundaries for canal Poramboke based on the original revenue records in respect of the land comprised in Survey No.126/A, to an extent of 2400 Sq.ft., and situate at Agraharam Village, Komarapalayam Taluk, Namakkal District(in WP No.31748 of 2017)

(11)issue an order of Writ or direction or order in a nature of a Writ of Mandamus forbearing the respondents 1 to 5 from evicting the petitioner without conducting re-survey by the respondents by fixing the boundaries for canal Poramboke based on the original revenue records in respect of the land comprised

in Survey No.85, situate at Agraharam Village, Komarapalayam Taluk, Namakkal District Corresponding to Door No.9C/13B, 9C/13C, 9C/13D and 9C/13E measuring to a total extent of 2700 Sq.ft., (in WP No.31750 of 2017)

(12) To issue a Writ, order or direction specifically Writ in the nature of Writ of Certiorarified Mandamus calling for the records pertaining to the notices issued by the 3rd respondent dated 12.7.2016 two notices in Na.Ka. No.A2/3400/2014 in respect of T.S.No.157 and Door Nos.53A & 52, in Ward D, Block No.21, Amman Nagar, Komarapalayam, Namakkal District and quash the same and consequentially issue direction directing the 3rd respondent to survey the property of the petitioner in connection with T.S.No.205, 206, 207, 208 & 211 situated in Ward D, Block No.21, Komarapalayam Town and Taluk, Namakkal District by considering the petitioner representation dated 17.3.2015 and 12.7.2016(in WP No.31787 of 2017)

(13) calling for the records pertaining to the notices issued by the 3rd respondent dated 12.7.2016 in Na.Ka. No.A2/3400/2014 in respect of T.S.No.157 and Door No.53A, in Ward D, Block No.21, Amman Nagar, Komarapalayam, Namakkal District to an extent of 99.45 sqmeter and quash the same and consequentially issue direction directing the 3rd respondent to survey the property of the petitioner in connection with T.S.No.205, 206, 207, 208 & 211 situated in Ward D, Block No.21, Komarapalayam Town and Taluk, Namakkal District by considering the petitioner representation dated 17.3.2015 and 12.7.2016(in WP No.31788 of 2017)

For Petitioner in : Mr.N.Manokaran
W.P.No.3927 of 2017

For Respondents 1, 2, 4 : Mr.V.Jayaprakash Narayanan
and 5 in W.P.No.3927 of Government Pleader
2017; Respondents 1 and 2
in W.P.Nos. 11793, 11794,
11795, 12328, 12329, 31787
and 31788 of 2017; 4th
Respondent in
W.P.Nos.12328 and 12329 of
2017; Respondents 1, 2, 4
and 5 in W.P.Nos.31744,
31745, 31747, 31748, 31750
of 2017

For 3rd respondent in : Mr.T.M.Pappiah
W.P.No.3927 of 2017; 3rd Special Government Pleader
Respondent in
W.P.Nos.11793, 11794,
11795, 12328, 12329, 31787
and 31788 of 2017; 3rd
Respondent in
W.P.Nos.31744, 31745,
31747, 31748, 31750 of
2017

For Respondents 12 to 15 : Mr.D.R.Arunkumar
and 28 to 34 in
W.P.No.3927 of 2017

For Respondents 16 to 27 : No appearance
in W.P.No.3927 of 2017

For Petitioners in : Mr.R.Marudhachalamurthy
W.P.Nos.11793, 11794,
11795, 12328, 12329, 31787
and 31788 of 2017

For Petitioners in : Mr.C.Prabakaran
W.P.Nos.31744, 31745,
31747, 31748, 31750 of
2017

ORDER

(Order of the Court was made by the Hon'ble Acting Chief Justice)

The petitioner, Amman Nagar - Narayana Nagar Residents Welfare Association, represented by its President, K.Thangavel, had filed W.P.No.3927 of 2017 with the following prayer:

"It is, therefore, prayed that this Hon'ble Court may be pleased to issue a Writ, Order or direction, specifically in the nature of Writ of MANDAMUS directing the respondents 1 to 5 to take action against the encroachers who have illegally occupied the entire Mettur Branch Irrigation Canal and the adjoining Public Road comprised in S.F.Nos.83 to 85 and 102 of Komarapalayam Agraharam Village, Ward Nos.14 to 16 and restore the said Canal and Road to its original position, pursuant to the orders dated 15.06.2015, 12.07.2016 passed by the 3rd respondent and also the orders dated 26.02.2015, 09.04.2015

and 05.05.2015, 27.01.2016 passed by the 5th respondent pass such further or other suitable orders as this Hon'ble Court deems fit and proper in the circumstances of the case and thus render justice."

2. As many as 28 private respondents have been arrayed in W.P.No.3927 of 2017 filed by the petitioner Association seeking the removal of alleged encroachments on the Mettur Branch Irrigation Canal and the Public Road comprised in S.F.Nos.83 to 85 and 102 of Komarapalayam Agraharam Village, Ward Nos.14 to 16 and restoration of the said Canal and Road to its original position. The other set of writ petitions, which are on our board today, namely, W.P.Nos.11793 of 2017, etc., have been filed by the alleged encroachers, who are private respondents in W.P.No.3927 of 2017 filed by the petitioner Association.

3. Upon issuance of notices, this Court directed submitting of Survey Report by the Tahsildar, Kumarapalayam Taluk, Namakkal, after conducting survey of the alleged encroachments made by the private respondents in W.P.No.3927 of 2017. Initially, a Survey Report was filed by the said Tahsildar on 11.6.2019. The relevant extract of the said Report from paragraph (3) is quoted below for ready reference:

"3. I submit that on receipt of the order of Hon'ble High Court by the respondents, the first respondent, the District Collector, Namakkal in her ROC.6271/2017/L5 dated 17.05.2019 has issued direction to (1) Assistant Director of Survey, Namakkal (2) Commissioner of Kumarapalayam municipality, Kumarapalayam, (3) Assistant Engineer WRO, PWD, Kumarapalayam (4) Tahsildar, Kumarapalayam to survey and demarcate the encroachments with reference to the Ayacut Land records available with Collectorate, Namakkal and to submit report in compliance. Accordingly, a team of officials have been deployed by the Assistant Director (Survey) to survey the encroachments as per the records in Ayacut survey and existing Town Survey.

4. I submit that the team of survey officials headed by Inspector of Survey, Namakkal have surveyed and demarcated the boundaries of lands correlating old Ayacut records available with Collectorate and existing Town Survey Records. The survey Officials have completed the survey work and submitted the combined sketch and statement showing the area of encroachments as per old Ayacut and existing Town Survey Records.

5. I submit that a scrutiny of combined sketch and statements prepared by survey official's shows that the encroachments details are almost similar to the details and sketch submitted earlier at the time of filling common counter affidavit.

6. I submit that the following area of encroachment has got variation while correlating old Ayacut and existing town survey records as follows.

W.P.No.	Name of the Encroacher/ WP No	Old Survey No	Town Survey No	Area already reported	Area as per Old Ayacut
11792/2017	A.Maheswari	101/2	Ward D Block 18 TS No.1	0.0004.5 Sq. mt.	Covered in patta
31748/2017	P.Ramesh	100/4A	Ward D Block 21 TS No.139	0.0033.2 Sq. mt.	Covered in patta

Except above two encroachments, areas of other encroachments have not differed while surveying as per Ayacut survey records.

7. I submit that variation in encroachment is found in the above cases only as per old Ayacut survey records. It has been revealed while comparing both sketches prepared as per old Ayacut and existing Town Survey that the alignments of long narrow fields such as channel, pathway etc were straightened at the time of town survey. The Land records pertaining to old survey were prepared at about in the year 1960 and that survey was based on Agriculture lands settlement, which had not even notified under section 13 of Survey and Boundaries Act 1923, to uphold the statutory validity of the records. Whereas Town survey commenced in the year of 1984 was based on physical feature such as residential houses, commercial buildings and power loom factories, etc. In fact, the agricultural lands classified at the time of Ayacut survey, later they were converted in to house sites in lieu of expansions of town area at kumarapalayam town and thus resulted formation of more numbers of buildings and other physical features. After the impacts, the town survey was conducted and boundaries were marked properly according to enjoyment, existing alignment and sale deeds. On completion of town survey, a notification under

section 13 of Tamilnadu Survey and Boundaries Act 1923 was published in the year 1998. As per section 11 of Survey and Boundaries Act 1923 with writ petitioners had ought to make proper appeal after issuance of notices under section 9 and 10 of Tamilnadu Survey and Boundaries Act 1923. The writ petitioners are not entitled to claim their rights over the lands classified as poramboke lands in town survey since notification under section 13 of Tamil Nadu Survey and Boundaries Act, 1923 had been published.

8. In view of status report submitted above, the claim of writ petitioners may be rejected as devoid of merits and thus render justice."

4. Thereafter, again this Court passed an order on 25.9.2019, as the Survey Report with regard to the survey conducted on 11.9.2019 was not filed in the Court by that point of time. It was also directed that, if necessary, a fresh survey may be conducted.

5. The learned Government Pleader, Mr.V.Jayaprakash Narayanan, submitted that since a detailed survey was conducted on 11.9.2019, a fresh survey was not necessary again and, therefore, a second Status Report dated 14.10.2019 has been filed by the Tahsildar, Kumarapalayam, today.

6. The contents of both the Status Reports are identical. However, for ready reference, we quote below the relevant portion of the Status Report dated 11.9.2019 from paragraph (3) onwards for ready reference:

"3. I submit that in pursuance of order issued by Hon'ble High Court on 4.9.2019, the 3rd respondent, the Commissioner of Komarapalayam Municipality, Komarapalayam has issued notices to all encroachers in his Roc.No.3400/2014/F.1 dated: 06.09.2019 pertaining to all poramboke lands covered in the batch of Writ Petitions to appear personally before the Survey Officials deputed by Tahsildar Kumarapalayam on 11.09.2019 at 10.30 am for demarcation of their buildings and lands as directed by Hon'ble Court.

4. I submit that the team of survey officials headed by Deputy Inspector of Survey, Kumarapalayam have surveyed and demarcated the boundaries of lands correlating old Ayacut records available with Collectorate and existing Town Survey Records in

the presence of 2nd respondent Tahsildar, Kumarapalayam, 3rd respondent Commissioner, Komarapalayam Municipality and 5th respondent the Assistant Engineer, WRO, Public Works Department, Mettur Canal Division, Kumarapalayam on 11.09.2019. The encroachers were present at the time of Survey work and they are well aware of their boundaries. The entire Survey process commenced from 11.9.2019 has been taken duration of two days and completed on 12.09.2019 and the same has been covered with Photography and Videography. The survey Officials have completed the survey work and submitted report as per old Ayacut and existing Town Survey Records.

5. I submit that a scrutiny of combined sketch and statements prepared by survey official's shows that the encroachments details are almost similar to the details and sketch submitted earlier at the time of filling common counter affidavit.

6. I submit that the following area of encroachment has got variation while correlating old Ayacut and existing town survey records as follows.

W.P.No.	Name of the Encroacher/ WP No	Old Survey No	Town Survey No	Area already reported	Area as per Old Ayacut
11792/2017	A.Maheswari	101/2	Ward D Block 18 TS No.1	4.5 Sq. mt.	Covered in patta
31748/2017	P.Ramesh	100/4A	Ward D Block 21 TS No.139	33.2 Sq. mt.	Covered in patta

Except above two encroachments, areas of other encroachments have not differed while surveying as per Ayacut survey records.

7. I submit that variation in encroachment is found in the above cases only as per old Ayacut survey records as per earlier status report filed me on 11.6.2019 before the Hon'ble Court. It is also submitted that the survey work in these fields have been done in part and parcel manner. The Survey Officials have done their work with transparency without suppressing any details or facts before the encroachers.

8. In view of status report submitted above, I humbly submit that the Hon'ble Court may please be to order dismissing Writ Petitions filed by encroachers as devoid of merits and thus render justice."

7. In view of the said consistent stand of the respondent Revenue Department, through the Tahsildar, it is clear that the private respondents in W.P.No.3927 of 2017 have encroached the respective lands of the survey numbers specified above in the prayer clause of the said writ petition.

8. However, the learned counsel for the private respondents in W.P.No.3927 of 2017, Mr.D.R.Arunkumar, and the learned counsel for the petitioners in W.P.Nos.11793, 11794, 11795, 12328, 12329, 31744, 31745, 31747, 31748, 31750, 31787 and 31788 of 2017, Mr.R.Marudhachalamurthy and Mr.C.Prabakaran, urged before us that even the members of the petitioner Association have encroached a part of the land in Survey No.219 of the said Village and page 278 of the report furnished earlier in the compilation of documents gives the details of the survey number and the extent of encroachment and the only submission made by them is that the public authorities should not pick and choose and remove the encroachments only of the private respondents in W.P.No.3927 of 2017 and not that of the members of the petitioner Association.

9. Having heard the learned counsel for the parties and in view of the aforesaid Survey reports, we are of the opinion that obviously the respondent public authorities cannot discriminate or pick and choose either the private respondents in W.P.No.3927 of 2017 or the members of the petitioner Association for removal of the encroachments and whoever has encroached the public land is bound to be removed from the encroached portion. We, therefore, expect and direct the concerned public authorities to remove all the encroachments made by all the encroachers of the said survey numbers, irrespective of the fact whether they belong to the petitioner Association or they are private respondents in W.P.No.3927 of 2017.

10. The learned Government Pleader undertakes that within three months from today all the encroachments will be removed and a compliance report shall be filed in this Court.

11. Since the Survey Reports produced before us give the details of all the alleged encroachments, we direct that all the encroachments be removed within a period of three months from today. A Compliance Report shall be filed in this Court by the learned Government Pleader and the Registry is directed to place

the Compliance Report before us in Chambers for perusal after three months.

With these directions, these writ petitions are disposed of. No costs. Consequently, W.M.P.Nos.13095, 13096, 34892, 34893, 34895, 34896, 34898, 34928 and 34929 of 2017 and W.M.P.Nos.27710 and 27714 of 2019 are closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

sasi

To

- 1 THE DISTRICT COLLECTOR
NAMAKKAL DISTRICT NAMAKKAL.
- 2 THE TAHSILDAR
KOMARAPALAYAM TALUK NAMAKKAL DISTRICT.
- 3 THE COMMISSIONER
KOMARAPALAYAM MUNICIPALITY KOMARAPALAYAM
NAMAKKAL DISTRICT.
- 4 THE ASSISTANT EXECUTIVE
ENGINEER CAUVERY EAST CANAL IRRIGATION
DIVISION PUBLIC WORKS DEPARTMENT ETHIRMEDU
THATTANKUTTAI VILLAGE KOMARAPALAYAM TALUK
NAMAKKAL DISTRICT.
- 5 THE ASSISTANT ENGINEER.
PUBLIC WORKS DEPARTMENT METTUR CANAL
DIVISION KOMARAPALAYAM NAMAKKAL DISTRICT.
- 6 THE REVENUE TAHSILDAR
TALUK OFFICE KOMARAPALAYAM
- 7 THE CHIEF SECRETARY TO GOVERNMENT
GOVERNMENT OF TAMILNADU
FORT. ST. GEORGE
CHENNAI 9.

+5 CCS to Mr.R.Marudhachalamurthy, Advocaes sr Nos. 86510, 86511, 86512, 86514, 86516.

+1 CC to Mr.N.Manokaran, Advocate sr 85856.

+1 CC to Mr.D.R.Arunkumar, Advocate sr 85913.

+1 CC to The Govt. Pleader sr 86466.

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BP(CO)

SP(19/11/2019)