

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 5.2.2019

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.24865 of 2017

A.Palanivelu ... Petitioner

Versus

1 The District Collector
Cuddalore District Cuddalore

2 The District Revenue Officer
Cuddalore

3 The Tahsildar
Panruti Taluk Cuddalore District

4 K.Ganeshamurthy ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus directing respondents 1 to 3 herein to take action under the Tamil Nadu Land Encroachment Act, 1905 against the 4th respondent for encroachment of the Government land comprised in Survey No.274/2 measuring 04.50 ares situated in Kattandikuppam Village Panruti Taluk Cuddalore District within a time frame to be fixed by this Honourable court pursuant to the representation of the petitioner dated 17.12.2016.

For petitioner : Mr.A.Damodaran
For RR1 to 3 : Mr.J.Pothiraj,
Special Government Pleader
For R4 : Mr.V.Rajesh Babu

ORDER

(Order of the court was made by Dr.VINEET KOTHARI, J.)

The petitioner A.Palanivelu son of Arumugam, Panruti Taluk, Cuddalore District has filed this PIL writ petition on 15.9.2017 praying therein that Respondent No.4 K.Ganeshamurthy, Son of

Kandaswamy Kachirayar, Panruti Taluk, Cuddalore District had encroached the land in Survey No.274/2 of 45 sq.mt of land in Kattandikuppam Village, Kadambuliur Village, Panruti Taluk, Cuddalore District and the same deserves to be removed under the orders of this court.

2. Upon issuance of notice, the respondents have put in appearance and filed a counter.

3. Since the said encroachment was admittedly found to be existing by Tahsildar and the same was not removed, the court summoned the District Collector of Cuddalore District by the last order dated 30.1.2019 and previous order dated 18.1.2019 quoted below for ready reference:-

"18.1.2019: The learned Government counsel prays for short accommodation to produce on record the Action Taken Report in pursuance to the counter filed by the third respondent - Tahsildar that there is an encroachment by respondent No.4 on the land in Survey No.274/2 (Old Survey No.604) in Kattandikuppam Village, Panruti Taluk, Cuddalore District, which is designated as 'Sarkar Poramboke' in the Revenue Record. The said counter was filed by the Tahsildar way back on 09.10.2017 and in the last order dated 18.12.2018, this Court has also called for a Report about the action taken with regard to the encroachment made by private respondent No.4 K.Ganeshamurthy.

2. Despite long lapse of time, no action seems to have been taken so far, though the Government counsel submits that inspection of the said site has been carried out. Unless the Action Taken Report is produced before the Court on or before 30.01.2019, we direct respondent No.1 - District Collector, Cuddalore District to remain present in this Court.

3. Put up the matter on 30.01.2019. "

"30.1.2019: Neither the Action Taken Report (ATR) has been filed nor the District Collector, Cuddalore is present in this court in terms of the order of this court dated 18.1.2019. Therefore, we direct the District Collector, Cuddalore to remain present in this court on 5.2.2019 at 10.30 am.

List the case on 5.2.2019."

4. The District Collector Mr.V.Anbuselvan, I.A.S. is present in the court and his Affidavit has been filed in the court today. According to the same, the land admeasuring 45 sq.mtrs in question in Survey No.274/2 Kattandikuppam, Panruti has been taken over by the Block Development Officer, Panruti on 29.1.2019 and thus the encroachment by Respondent No.4, K.Ganeshamurthy is said to have been removed. The relevant para of the said Affidavit dated 4.2.2019 is quoted below for ready reference:-

"6. It is submitted that thereafter the Block Development Officer, Panruti issued notice to the encroachers vide A4/187/2018 dated 19.1.2018 and even after the due notice period since the encroachers has not vacated the premises, the Block Development Officer, Panruti has taken over the possession of the land alongwith building on 29.1.2019 in Kattandikuppam Village, Kadampuliyur, Panruti with assistance of Police and Revenue Officials. It is submitted that as the building is situated in land which belongs to Panchayat Union, the possession of this building has been taken over by the Block Development Officer, Panruti with intention of using it for future Government public purpose."

5. The learned counsel appearing for the petitioner further submits that the property in question situated in the said encroached land has not been demolished so far.

6. On the other hand, the learned counsel appearing for Respondent No.4, the alleged encroacher submits that the Revenue entry with regard to the said Survey Number earlier disclosed in the Counter Affidavit filed by Respondent No.1 was something different describing it to be "Natham Settlement" and now, it is said to be "Sarkar Poramboke" and therefore, Respondent No.4 may be given an opportunity to putforth his case and produce relevant records before the Block Development Officer concerned irrespective of the pendency of this PIL writ petition.

7. As far as the question of demolition of the superstructure in the encroached land is concerned, the learned Government Counsel submitted that necessary proceedings for that will have to be initiated by the Block Development Officer, Panruti now and the necessary action in the matter will be taken.

8. Having heard the learned counsel appearing for the parties and upon perusal of the materials placed before us and the site photographs produced today, we are satisfied that the land in question encroached by Respondent No.4 has been taken into possession by the Block Development Officer as submitted by the District Collector in his Affidavit. In view of the same, we are not inclined to proceed further in the present PIL writ petition. The further proceedings in the matter may be taken by the competent authority viz., the Block Development Officer, who will provide an opportunity of hearing to Respondent No.4 as well as the petitioner/complainant and pass an appropriate speaking order in the matter. If the resultant order passed by the Block Development Officer does not satisfy the petitioner or Respondent No.4, K.Ganeshamurthy, it is for them to seek appropriate remedy by way of filing Civil Suit in the Civil Court.

9. With the above observation, the writ petition is disposed of. No order as to costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ssk.
To:

- 1 The District Collector,
Cuddalore District, Cuddalore.
- 2 The District Revenue Officer,
Cuddalore.
- 3 The Tahsildar,
Panruti Taluk, Cuddalore District.

+1cc to the Government Pleader Sr.10006
+1cc to M/S.A.Damodaran, Advocate Sr.9635
+2cc to M/S.V.Rajesh Babu, Advocate Sr.9516

W.P.No.24865 of 2017

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