

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 4/2/2019

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Petition No.30767 of 2018

G. Baskaran

...Petitioner

Vs

1. The District Collector
Thiruvallur District.
2. The District Revenue Officer
Thiruvallur Taluk Office
Thiruvallur.
3. The Commissioner
Villivakkam Panchayat Union
Ambattur
Chennai 600 053.

4. V. Indira.

....Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus to direct the first, second and third respondents to take action against the fourth respondent to remove the encroachment made by him in the water bodies in Survey No.374/1 A of Vellanur Village, Red-hills catchment area based on the orders passed by the third respondent on 20/6/2018.

For petitioner : Mr.R.Sreedhar
For respondents : Mr.Akhil Akbarali
Government Advocate
for R.R.1 to 3.

O R D E R

(Order of the Court was made by S.Manikumar,J)

Material on record discloses that earlier, the petitioner has filed W.P.No.29196 of 2017, seeking for a direction, to

consider the representation, dated 3/7/2017, and to take action against the illegal encroachment and unauthorised construction, alleged to have been made by the fourth respondent, on a public canal. Construction of shops and buildings, in Plot No.8, comprised in S.No.374/1A, situated at Tirupati Nagar, Vellanur Village, public canal has been encroached.

2. Petitioner has contended that encroachment and construction have obstructed flow of water during rainy season.

3. After hearing the learned counsel for the parties, a Hon'ble Division Bench of this Court, vide, order, dated 17/11/2017, in W.P.No.29196 of 2017, has directed the respondents therein, to cause local inspection of the area, in question, i.e., public canal, in S.No.374/1 A, situated at Tirupati Nagar, Vellanur Village, within a fortnight. If any encroachment is found, the official respondents shall take action, in accordance with law, after putting on notice to all the concerned, particularly, the fourth respondent, and conclude the proceedings, within two months, from the date of inspection.

4. Pursuant to the directions, the District Collector, Tiruvallur District, has issued a letter, dated 19/5/2018, to G.Baskaran, writ petitioner and Mrs.V.Indira, fourth respondent, therein, and other officials. Letter reads thus:-

Na.Ka.No.2851/2018/No.1

Date: 19/5/2018

CALL LETTER

Sub: Case - W.P.No.29196/2017 and WMP No.31457/2017 Mr.G.Baskaran - regarding to be present for enquiry against the case filed in Madras High Court.

Ref: Madras High Court W.P.No.29196/2017 and WMP No.31457/2017

Mr.G.Baskaran had a writ petition before the Madras High Court to remove the encroachment in Survey No.374/1A, Vellanur Village, Avadi Taluk, Thiruvallur District. Hence, I hereby called upon you to attend the enquiry which is to be held on 29/5/2018 at 4.30 p.m., before the office of the District Collector, Thiruvallur, with all the relevant original documents, failing with necessary action would be initiated against you.

The District Collector
Thiruvallur.

5. On 29/5/2018, a similar letter, dated 11/6/2018, has been issued, by the District Collector, for an enquiry, on 27/6/2018. In the meanwhile, the Commissioner, Villivakkam

Panchayat Union, Ambattur, has also issued a notice, dated 20/6/2018, to Mrs.Indira, fourth respondent in the above said writ petition, with copies marked, to the District Collector, Thiruvallur and Mr.G.Baskaran, writ petitioner. Notice, dated 20/6/2018, is reproduced hereunder:-

Na.Ka.No.2828/2018/aa3

Date: 20/6/2018

Sub: Panchayath - administration - Villivakkam
- Panchayath Union - Vellanur Panchayat
S.No.374/1A - Building constructed in
unapproved plot in Water Body sector -
case pending in Madras High Court -
notice to demolish building issued -
regarding.

Ref: 1. Na.Ka.No.2951/18/No.1 Date 19/5/2018
issued by the District Collector,
Thiruvallur.
2. W.P.No.29196/2017 and W.P.No.31457/17
date 27/1/2017

You had encroached the unapproved plot in Survey No.374/1A in Vellanur Panchayat in Villivakkam Panchaya Union. As per the Tamil Nadu Panchayat Act Building Rule 1997 and CMDA full integrity projects 2026 the above lands in Survey No.374/1A has been declared as water catchment area. Hence you are instructed to demolish the building constructed thereon within 15 days from the date of receipt of this notice, falling which it is informed that the panchayat administration will demolish the same and the entire expenses rendered should be borne by you.

Commissioner
Villivakkam Panchayat Union
Ambattur.

6. Contending inter alia that the order, dated 20/6/2018, has not been implemented, in letter and spirit and encroachment has not been removed, petitioner has filed the instant writ petition, for a mandamus, to direct the first, second and third respondents, to take action, against the fourth respondent, to remove the encroachment, made in the water bodies, in Survey No.374/1 A of Vellanur Village, Red-hills catchment area, based on the orders passed by the third respondent, on 20/6/2018.

Prayer in W.P.No. 29196 of 2017	Petitioner in W.P.No. 30767 of 2018
To direct the first respondent, based on the petitioner's representation dated 30/7/2017, to take action against the illegal encroachment and unauthorised construction commenced by the fourth respondent.	To direct the first, second and third respondents to take action against the fourth respondent to remove the encroachment made by him in the water bodies in Survey No.374/1A of Vellanur village, red-hills catchment area based on the orders passed by the third respondent on 20/6/2018.

7. From the above, it could be deduced that pursuant to the directions of this Court, respondents have taken action. Fresh cause of action alleged to have been included in the prayer is the proceeding, dated 20/6/2018, of the Commissioner, Villivakkam Panchayat Union, Ambattur, Chennai. The petitioner seeks only to enforce the order of this Court, made in W.P.No.29196 of 2017, for which, another writ petition is not required.

8. In the event of failure to implement the directions of this Court, appropriate remedy would be to file contempt petition. Mandamus after mandamus cannot be granted, for the same purpose. At the same time, respondents, who have been already been directed, in W.P.No.29196 of 2017, dated 17/11/2017, to take action, for removal of encroachment, if any found, within two months, from the date of inspection, cannot also be allowed to keep quiet. Orders of this Court, to be implemented, in letter and spirit, and it is made that Court can also initiate suo motu contempt proceedings.

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

mvs

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The District Collector
Thiruvallur District.

2. The District Revenue Officer
Thiruvallur Taluk Office
Thiruvallur.

3. The Commissioner
Villivakkam Panchayat Union
Ambattur
Chennai 600 053

+1cc to Mr.R.Sreedhar, Advocate, Sr.No.9300

+1cc to the Govt.Pleader, vide SR.NO.9456

Writ Petition No.30767 of 2018

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kak(05/03/2019)



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