IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2019

CORAM:

THE HON'BLE DR. JUSTICE VINEET KOTHARI
and
THE HON'BLE MR. JUSTICE C.SARAVANAN

W.P.No.32158 of 2018
and
WMP.No.37414 of 2018

A.A.Radhakrishnan ...Petitioner

..Vs..

1. The Secretary to Government,
Revenue Department,
Secretariat,
Chennai-600 009.

2. The Secretary to Government,
Home Department,
Secretariat,
Chennai-600 009.

3.The Secretary to Government,
Public Works Department,
Secretariat,
Chennai-600 009.

4.The Secretary to Government,
Highways Department,
Secretariat,
Chennai-600 009.

5.The Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat,
Chennai-600 009.

6. The Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat,
Chennai-600 009.

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7. The Secretary to Government,
   Tourism Culture and Endowments Department,
   Secretariat,
   Chennai-600 009.

8. The District Collector,
   Dharmapuri.

9. The Deputy Inspector General of Police,
   Salem.

10. The Taluk Executive Magistrate Cum Tahsildar,
    Pennagaram, Dharmapuri District.

11. The Deputy Inspector General of Registrations,
    Collectorate Campus,
    Salem.

12. The Assistant Director,
    District Land Survey Office,
    Dharmapuri.

13. The Assistant Director,
    Geology and Mining Department,
    Dharmapuri.

14. The Assistant Director of Panchayats,
    Dharmapuri.

15. The Assistant Director of Town Panchayats,
    Dharmapuri.

16. The Superintending Engineer,
    Tamil Nadu Generation and Distribution Corporation,
    Dharmapuri.

17. The Executive Engineer,
    Water Resources Department,
    Public Works Department,
    Dharmapuri.

18. The Divisional Engineer (C & M),
    Highways Department,
    Dharmapuri.

19. The Joint Commissioner,
    Hindu Religious & Charitable Endowments
    Department, Salem.

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20. Pon.Vellaiyan

21. Vadivel

22. Murugan

23.Chinna Thambi

24.Chandiran

25.Sakthivel Naidu

26. Tmt.Kokila

27.P.Gnanasekaran

28.Veerapandian

29.Dowlath Basha

30.Dr.Selladurai.

31.A.N.M.S.Sivaraj

32. The Proprietor,
Jeyam College of Engineering,
Sigaraharahalli,
Pennagaram Taluk,
Dharmapuri District. ...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India praying for a Writ of Mandamus to direct the respondents 8 to 19 to take appropriate action to remove the encroachment found on the water body, temple lands and other Public Places on considering the detailed report submitted by the 10th respondent as well as by considering the petitioner representation dated 03.10.2018.

For Petitioner : Mr.M.Thanu

For Respondents : Mr.V.Jayaprakash Narayanan
Government Pleader
(R1 to R6, R8 to R10,
R12 to R15, R17 & R18)
Mr.P.Valliappan (R25)
Mr.M.Maharaja (R7 and R19)
Special Government Pleader
Mr.M.Varunkumar (R16)
Mr.T.M.Pappiah (R11)
Special Government Pleader

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O R D E R

(Order of this Court was made by DR.VINEET KOTHARI, J.)

Mr.A.A.Radhakrishnan, the petitioner herein has filed this Writ Petition under Article 226 of Constitution of India with the following prayer:

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"To direct the respondents 8 to 19 to take appropriate action to remove the encroachment found on the water body, temple lands and other Public Places on considering the detailed report submitted by the 10th respondent as well as by considering the petitioner representation dated 03.10.2018."

2. Upon issuance of notice the respondents were put in appearance. A status report dated 04.02.2019 has been filed by the The Taluk Executive Magistrate cum Tahsildhar, Pennagaram, Dharmapuri District. The operative portion of the status report is quoted below for ready reference:

"4. It is submitted that on communication from 8th respondent, the 10th respondent (Tahsildar, Pennagaram) along with other departmental officials including the petitioner has conducted filed inspection in Papparapatti Village and other neighbouring hamlets on completion of field inspection and the 10th respondent sent his detailed report in R.C.No.01/2018/A1 Dated:06.10.2018 to the 8th respondent, wherein it has been clearly stated about the encroachment found which made along with the team consisting of the AD, Town Panchayat, Dharmapuri, BDO, Pennagaram, AD, Horticulture, Sub Registrar, Pennagaram, Assistant Engineer, Tamil Nadu Environmental Board, Special Revenue Inspector Office of AD (Geology and Mining), Dharmapuri, AE, TNEB, Taluk Deputy Surveyor, Penangaram and Revenue Inspector, Pennagaram besides Police officials, etc., and stated that suitable instructions have been issued o the concerned authorities for taking appropriate and prompt action to remove the water body encroachment and other public encroachments and including temple premises.

5. It is stated that it is false to say that no further follow up action was taken by the officials concerned so as to restore to the earlier status as they were all up a sudden eviction could not be done without following any kind of process of Law in force. On receipt of proper reports with regard to encroachment, from the competent

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authorities immediate steps would be taken by the 10th Respondent according to the instructions (or) directions of the 8th Respondent.

6.It is humbly submitted that the report of the 10th Respondent is as following.

(1). The S.No.535/4 having extent of 0.35.0 Hects, belongs to the President Panchayat Board, Papparapatti under patta No.968, which was functioned as Govt. Arts College, till the time shifting to its own Govt. Building. As and when the said Arts College moved to Govt, Building, the above said land would be utilized for the public purpose in consultation of the concerned officials for suitable modifications etc.,

(2). The Chinna Eri is having an extent of 14.22.5 Hects. The adjoining road of the said tank is being formed as a fresh at the cost of 1.80 crore under the scheme of The Hon'ble Prime Minister and that the temporary road has been formed in the tank for the immediate use of the general Public etc. On completion of the said Road Work, the temporary Road formed in the said tank, would be dismantled.

(3) More over the BDO, Pennagaram has been instructed to take steps to strengthen the Bunds of the said Chinna Eri after clearing the bushes and unwanted plants available in the Eri Water. All wastages are being dumped in the Eri and as well as to avoid the drain water mingling in the Eri and that very bad smell is spread over that area.

(4) The Block Development Officer, Pennagaram has also requested to list out the encroachments with the actual extent by utilizing the services of the survey staff and furnish the same to the 8th and 10th Respondents for the immediate steps to issue notices water as per Rules and regulations as contemplated into TamilNadu Land Encroachment Act 1905.

(5). Similarly in the case of Chinna Eri, the Block Development Officer, Pennagaram,

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E.O. (Town Panchayath), Papparapatti, PWD Officials have also been suitably instructed to list out the encroachments available in the existing water body under their control and submit the same to the 8th and 10th Respondents for further follow up process etc at their end.

(6)Arulmigu Vinayagar Kovil is situated in S.No.843/19 classified as Natham Promboke street with in a small extent. There are 80 numbers of wooden logs have been kept along with wooden poles ladders and iron materials are damaged inside the temple which causes inconvenience to the Public who are coming to worship the temple.

(7) In the above said survey field, there are 13 shops let out for rental purpose by some encroacher. Hence instructions have been issued to prepare form 7 Notices as per Tamilnadu Encroachment Act 1905 and thereafter issuing form No.6 notice by the Tahsildar, Pennagaram after observing all kind of proceedings etc as per law in force.

(8)S.No.1233/15, 16, 17 is classified as Natham Proamboke with an extent of 5300 sq.Meter wherein a bakery manufacturing shop is located. The following persons are having pattas in the said land.

Patta No.	Name of the Holder
915	Basheer S/o Sheik Ushen
563	Dhowlath Basha
522	Dhowlath Basha

More over instructions have been issued to maintain the said village site as vacant site for ever for common public use.

(9) A very old tiled house in S.F.No.650/20 owned by K.Gopalsamy has been noticed in dangerous condition which may fall down at any time. The owner of the house under patta no.314 K.Gopalsamy left elsewhere some several years back. So as to protect the public who are crossing the said worst conditional building. The Police authority has been requested to send a report

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according to Section 133 (d) of the CrPc for passing orders.

(10) An extend of 0.02.03 Sq Metere of Village site poromboke is kept vacant under patta No.1836 which was issued to Sakthivel Naidu S/o. Murugappa Naidu as per R.Dis No.3747/2008 Dated 26.06.2008 without any kind of structure for more than 10 years. Hence the ZDT, Pennagaram has been instructed to investigate and submit his report in this matter.

(11) The S.No.535/2AAA classified as Dry land owned by Subramaniya Davasdanam under patta No.542 with an extent of 0.17.0 Hects. An marriage Hall with 400 Square Foot and Seven tiled houses with mud well are available in this land. Out of 7 Houses two houses were already fell down and the remaining houses may also fall down at any time since they are such dangerous condition. Hence a police report under section 133 of CrPc is expected in this regard. The afore said land is belonging to the Old Subramania Samy Temple as per Deed No.1485/1914 dated 14.07.1917 of the SRO Palacode. The said land was lastly 02.02.2016 inspected by the Joint Commissioner of Hindu Religious Dept, Salem Region, Salem.

(12) The land in S.No.340 extent 0.41.0 Hect. under patta No.701 and Patta No.136 an extent of 4.31.0 Hect. were encroached by private persons other than the pattadar and that they themselves formed a burial ground for common public use and put up (sengal soolai) for their personal benefit. The authorities have been asked to submit detailed report for the appropriate action in this regard.

(13)In Panaikulam village the land an extent of 4.46.0 Hects under patta No.1 and an extent of 0.35.50 Hects of land under. Patta No.1364 belongs to Kaveri Ranganatha Samy and that is brought to notice that such lands are being sold out. Therefore the authorities have been asked to submit their reports after holding detailed enquiries for

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proceeding further.
(14) In Panaikulam village an extent of 13.76.0 Hects of land belongs to Sellaiamman kovil. There were 25 houses, two Poultry rearing units and 10 numbers of Brick Kiln are functioning. The authority concerned has been requested to inquiry into this and submit their reports for take early appropriate actions etc.
(15)In Singaralahalli Village of Pennagaram Taluk, an Engineering college by name Jayam college is functioning, during the time of inspection it has been Detected that the college had encroached the land in S.No.66/1 with an extent of 0.05.0 Hect. classified as Kovil/Temple poramboke and S.No.67/6 with an extent of 0.65.0 Hect. classified as Kuttai/Pond poramboke. Hence notice in form no.7 has been issued as per TNLE Act 1905 on getting a reply from the said encroacher No.6 notice would be issued for the eviction proceedings very soon.

7. It is humbly submitted that all the departmental officials have been requested to submit their detailed reports only after conducting detailed enquiries with reference to their personal field inspection etc. with survey Filed No. extent of encroachment details of encroached and full address of the such encroaches etc. On receipt of such reports from the various departmental officials, necessary action would be taken as per TamilNadu Land Encroachement Act 1905 to remove the encroachments following due process.
8. In the said circumstances, it is just and necessary this Hon'ble Court may be pleased to grant sufficient time to all the respondents to hold joint enquiries and inspections, so as to ensure proper eviction proceedings."

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3. Though the prayer in the Writ Petition is for a wide relief, the respondents appear to have made an enquiry and have given a detailed status report , wherein in paragraph 5.2 it is clearly stated that the temporary road has been formed in the tank for the immediate use of general public etc., and after the completion of the road work adjoining the tank, the temporary

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road formed in the said tank would be dismantled. It is also stated that representation made by the petitioner on 03.10.2018 was responded to by the eighth respondent on 06.10.2018, i.e, within three days.

4. We are satisfied that the respondents have initiated the appropriate action in the matter have filed the status report. Therefore, no further direction is required at this stage.

5. In view of the same, this Writ petition is disposed of with liberty to the petitioner to work out his remedy as per G.O.Ms.540 dated 04.12.2014 which provides mechanism for such encroachments for the aggrieved persons, in case any encroachments are not removed. No costs. Consequently, connected Miscellaneous Petition is closed.

arr

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

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Revenue Department,
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Chennai-600 009.

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Chennai-600 009.

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Public Works Department,
Secretariat,
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+1cc to Mr.R.Marudhachalamurthy, Advocate, SR.No.80657
+1cc to Mr.P.Valliappan, Advocate, SR.No.80567
+1cc to Mr.Rukmangathan, Advocate, SR.No.80521
+1cc to the Govt.Pleader, Advocate, SR.Nos.80706, 81197 & 81245

W.P.No.32158 of 2018

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