



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.06.2019**

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

AND

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P(MD)NO.12166 OF 2019

and

W.M.P(MD)Nos.9139 to 9141 of 2019

G.Paramasivam : Petitioner

.vs.

1.The District Collector,
Virudhunagar District,
Virudhunagar.

2.The Tahsildar,
Watrap Taluk,
Watrap,
Virudhunagar District.

3.The Executive Officer,
Watrap Town Panchayat,
Watrap,
Virudhunagar District.

4.P.Vinayagam : Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned notice passed by the third respondent vide his proceedings in Na.Ka.No.36/2019, dated 6.5.2019 and to quash the same as illegal and consequently to forbear the respondents, their men and agents from evicting the Petitioner from S.F.No.1573/44, situated in D.No.51A, Seniyakuditheru, Watrap, Virudhunagar District.

For Petitioner : Mr.S.Karthick Subramanian

For Respondents : Mr.N.Shanmugaselvam
1 and 2 Additional Govt.Pleader

For Respondent-3 : Mr.J.Gunaseelan Muthiah
Addl. Govt.Pleader

For Respondent-4 : Mr.M.Thirunavukkarasu

**ORDER**

[Order of the Court was made by **K.RAVICHANDRABAABU., J.**]

This Writ Petition is filed challenging the proceedings of the third respondent dated 6.5.2019, wherein and whereby, the Petitioner was called upon to remove the encroachment made in S.F.No.1573/44 measuring an extent 0.00.40.0 hectares on Vathirayiruppu Village, Virudhunagar District.

2.Heard the learned counsel appearing on either side and perused the materials placed before this Court.

3.According to the Petitioner, he has not made any encroachment and on the other hand, the subject-matter property originally granted with patta, has subsequently been wrongly classified as ''Natham Poramboke''. Therefore, it is contended that the third respondent is not justified in issuing the impugned proceedings. The learned counsel for the Petitioner further submitted that the third respondent is not entitled to issue the eviction order, as such power is vested only with the revenue officials.

4.On the other hand, it is submitted by the learned counsels appearing for the official respondents that under Section 131(2) of the Tamil Nadu Panchayat Act, 1904, the Executive Authority of the Panchayat is empowered to take action, secure the removal of the encroachments and therefore, the impugned proceedings issued by the third respondent is sustainable in law. They also pointed out that even otherwise, the Tahsildar has already issued a notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 on 25.10.2018 and therefore, further proceedings would be taken to evict the Petitioner by the revenue officials, by following the procedures contemplated under the 1905 Act.

5.An allegation of encroachment in the subject-matter property is made against the Petitioner. Consequently, the impugned proceedings was issued by the third respondent. Though it is contended by the Petitioner, that the third respondent lacks jurisdiction to issue the impugned order, We are not convinced with the said submission in view of the specific provision under the Tamil Nadu Panchayat Act,1904, more particularly, under Section 131 (2) of the said 'Act' empowering the Executive Authority or the Commissioner of a particular Panchayat Union either suo-motu or after obtaining a report from the Village Administrative Officer for securing the removal of encroachments. Further, it is seen from the said position of law that if the removal of encroachment has not been secured within the period specified in the said order, only the Officer of the Revenue Department shall institute proceedings under the Tamil Nadu Land Encroachment Act, 1905 and secure such removal. Therefore, it is apparent that the ultimate removal of encroachment must be made by the revenue officials by resorting to the procedures contemplated under the Tamil Nadu Land Encroachment Act,1905.



6. In this case, admittedly, the Tahsildar, Vathirayiruppu Taluk has issued a notice under Section 7 of the said 'Act' on 25.10.2018 to the Petitioner. Though it is stated that a reply is given to the Tahsildar, We find no such reply is made available in the typed-set of papers. Further, as we propose to dispose the Writ Petition, without expressing any view on the rival contentions made by the parties, We direct the Petitioner to give a suitable reply to the notice, dated 25.10.2018 issued under Section 7 of 'Act', within a period of two weeks from the date of receipt of a copy of this order. On receipt of such reply, the Tahsildar, Vathirayiruppu Taluk, Virudhunagar District/second respondent shall consider the same and pass final orders under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 within a period of six weeks thereafter.

7. With the above observations and directions, the Writ Petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

/ True Copy /

Sub Assistant Registrar (CS-)

vsn

To

1. The District Collector,
Virudhunagar District, Virudhunagar.

2. The Tahsildar,
Watrap Taluk, Watrap,
Virudhunagar District.

3. The Executive Officer,
Watrap Town Panchayat,
Watrap, Virudhunagar District.

+1 CC to M/s. M. THIRUNAVUKKARASU, Advocate
(SR-70800[F] dated 24/06/2019)

+1 CC to M/s. S. KARTHICK SUBRAMANIAN, Advocate
(SR-71083[F] dated 25/06/2019)

+1 CC to M/s. J. GUNASEELANMUTHIAH, Advocate
(SR-71097[F] dated 25/06/2019)

ORDER MADE IN
W.P(MD) NO. 12166 OF 2019 and
W.M.P(MD) Nos. 9139 to 9141 of 2019
24.06.2019