



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.03.2019

CORAM:

THE HON'BLE Mr. JUSTICE K.KALYANASUNDARAM

AND

THE HON'BLE Mrs. JUSTICE S.RAMATHILAGAM

W.P. (MD) No. 5301 of 2019

and

W.M.P. (MD) No. 4231 of 2019

K.Rajendran

... Petitioner

Vs.

1.The District Collector,
Pudukottai District,
Pudukottai.

2.The Block Development Officer (Panchayat),
Panchayat Union,
Viralimalai,
Pudukkottai District.

... Respondents

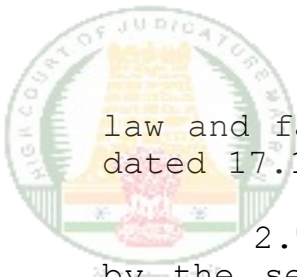
PRAYER: The petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 2nd respondent in Na.Ka.Thi.1/4819/2017, dated 15.02.2019 and quash the same as illegal and consequently, direct the 2nd respondent to give the petitioner an opportunity of hearing for raising his contentions both in law and facts and make the findings on merits before proceeding any further pursuant to the common order passed by this Court dated 17.12.2018.

For Petitioner	: Mr.R.Thirugnanasambandam
For Respondents	: Mr.M.Pandiarajan, AGP for R1 Mr.Ayiram K.Selva Kumar, AGP for R2

ORDER

(Order of the Court was made by K.KALYANASUNDARAM, J.)

This Writ petition has been filed for issuing a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the second respondent in Na.Ka.Thi.1/4819/2017, dated 15.02.2019 and quash the same as illegal and consequently, direct the second respondent to give an opportunity of personal hearing for raising his contentions both in



law and facts as per the order of the Division Bench of this Court dated 17.12.2018.

2.The notice impugned in this Writ petition has been issued by the second respondent, directing the petitioner to remove the encroachment made in Survey No.55/42 measuring an extent of 70 sq.ft.

3.Mr.R.Thirugnanasambandam, learned counsel for the petitioner would state that the petitioner is the owner of the property in Survey No.55/13 and he was also issued with patta bearing No.162 by the Special Tahsildar, Illuppur in the year 1990 and he has been in possession and enjoyment of the said land measuring 70 sq.ft. in Survey No.55/42 and he has constructed a bathroom cum toilet on the said portion.

4.It is the contention of the learned counsel for the petitioner that similar notice was challenged by the petitioner in W.P.(MD)No.19359 of 2018 and while disposing of the Writ petition, direction was issued to the second respondent / Block Development Officer to consider the objections of the petitioner and pass orders. But without considering the objection of the petitioner, on 17.12.2018, the present impugned order has been passed. The specific case of the petitioner is that the second respondent has no jurisdiction to order eviction.

5.Per contra, it is the submission of the learned Additional Government Pleader that Section 131 of the Tamil Nadu Panchayat Act, enables the second respondent to issue notice to remove the encroachment and if the encroachment is not removed within the stipulated time, the second respondent will refer the matter to the concerned Tahsildar to evict the encroacher by following the provisions of the Tamil Nadu Land Encroachment Act, which is also observed in the order impugned in this Writ petition.

6.At this juncture, it is useful to extract Section 131 of the Tamil Nadu Panchayat Act as under -

"131.Prohibition against obstructions in or over public roads, etc. -

(1) No person shall, except as permitted by Rules made under this Act and except in accordance with the conditions imposed by any licence made requisite by such Rules -

(a) build any wall or erect any fence or other obstruction or projection or make any encroachment whatsoever, whether permanent or temporary, in or over any public road or any property vested in or belonging to or regulated or owned by, a Village Panchayat or Panchayat Union Council];

(b) make any hole or deposit any matter in or over any public road or any property vested in or belonging to or regulated or owned by, a Village Panchayat or



Panchayat Union Council;

(c) work a quarry in or remove stone, earth or other material from any place within twenty metres of a public road or of other immovable property vesting in or belonging to a Village Panchayat or Panchayat Union Council, provided that nothing in this clause shall be deemed to apply to any work which, in the opinion of the Inspector, is done in connection with a bonafide agricultural operation;

(d) erect any building over any drain or any part thereof;

(e) plant any tree on any public road or other property vesting in or belonging to a Village Panchayat or a Panchayat Union Council: or

(f) fell, remove, destroy, lop or strip bark, leaves, or fruits from, or otherwise damage, any tree which is growing on any such public road or other property or on any poramboke land, the use of which is regulated by a Village Panchayat under Section 134 or Section 135 and the right to which has not been established by such person as vesting in or belonging to him.

(2) It shall be the duty of the Village Administrative Officer of every revenue village to report on encroachments on properties vested in Village Panchayats or Panchayat Union Councils to the Executive Authority or the Commissioner concerned and to the officer of the Revenue Department, and it shall be the duty of the Executive Authority or the Commissioner concerned either suo motto or on obtaining a report from the Village Administrative Officer in this regard to institute proceedings under this Act and secure the removal of the encroachments within such time as may be specified by the Government by general or special order. If the removal of the encroachments has not been secured within the period specified in such order, the officers of the Revenue Department shall institute proceedings under the Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act III of 1905) and secure such removal."

7. The plain reading of the above Section makes it clear that a duty is cast upon the Village Administrative Officer of every revenue village to report on encroachments on properties vested in Village Panchayats or Panchayat Union Councils to the Executive Authority or the Commissioner and then it is the duty of the Executive Officer or the Commissioner to institute proceedings under this Act to secure the removal of encroachments. If the removal of encroachments has not been secured within the specified period in such order, the officers of the Revenue Department shall institute proceedings under the Tamil Nadu Land Encroachment Act, 1905, and secure such removal. It is to be further seen that the



second respondent has no authority to consider the objections submitted by the petitioner. Therefore, we find no substance in the contentions of the petitioner.

8. For the foregoing reasons, we do not find any merit in this Writ petition. In the result, the Writ petition fails and the same is dismissed. No costs. Consequently, connected W.M.P. is closed.

Sd/-

Assistant Registrar (P & A)

// True Copy //

Sub Assistant Registrar (CS)

nbj

To

1. The District Collector,
Pudukottai District,
Pudukottai.

2. The Block Development Officer (Panchayat),
Panchayat Union,
Viralimalai, Pudukkottai District.

+1CC TO MR.R.T.SAMBANDAM, Advocate Sr. No. 54595

+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 54756

W.P. (MD) No. 5301 of 2019

15.03.2019

TR (22.04.2019) 4P 5C