



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 17.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA
and

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY
W.P. (MD) No.18185 of 2018

L.Venkatapathy

... Petitioner

Vs.

1.The District Collector,
Theni,
Theni District.

2.The Tahsildar,
Uthamapalayam Taluk,
Theni District.

3.The Assistant Director of Town Panchayat,
Poothipuram,
Palanichettipatti,
Theni District.

4.The Executive Officer,
Anumanthanpatti Town Panchayat,
Anumanthanpatti,
Uthamapalayam Taluk,
Theni District.

5.Soundaraj

6.Ravichandran

7.Indhurani

8.Munichamy

9.Govindaraj

... Respondents

PRAYER: The writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents 1 to 4 to remove the encroachment made by the respondents 5 to 9 in public street situated in Ward No.8, Allah Kovil Street, 1st Street, Anumanthanpatti, Theni District.

For Petitioner

: Mr.R.J.Karthick

For Respondents

: Mr.V.R.Shanmuganathan

1 to 3

Special Government Pleader

For Respondent 4

: Mr.M.Murugan

For Respondents

: Mr.K.Prabhu



ORDER

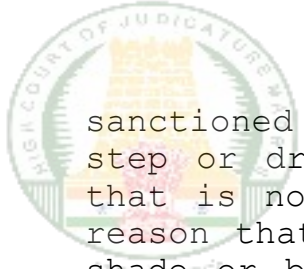
(Order of the Court was made by T.RAJA, J.)

This Writ Petition has been filed seeking mandamus directing the District Collector, Theni; The Tahsildar, Uthamapalayam; the Assistant Director of Town Panchayat, Poothipuram, Theni District, and the Executive Officer, Anumanthanpatti Town Panchayat, the respondents 1 to 4 herein, to remove the alleged encroachment made by Mr.Soundaraj, Mr.Ravichandran, Mrs.Indhurani, Mr.Munichamy and Mr.Govindaraj, the respondents 5 to 9, in the public street situated in Ward No.8, Allah Kovil Street, 1st Street, Anumanthanpatti, Theni District.

2.Heard the learned Counsel appearing for the petitioner, the learned Special Government Pleader appearing for the respondents 1 to 3, the learned Counsel appearing for the respondent 4 and the learned Counsel appearing for the respondents 5 to 9.

3.The learned Counsel appearing for the petitioner has produced a photograph showing how the staircases and projections viz., pial has been built completely encroaching into the small street. Elenlightening the importance and necessity for removal of the encroachment, he has also submitted that the encroachment made in the public street is not only disturbing the day-to-day life of the people living therein but also no way for free movement in the street. Even during emergency situation, ambulance and other vehicles could not pass through the street because the respondents 5 to 9 have made encroachments restricting the free movement of the people and two wheeler in the street in question. Therefore, the petitioner made a request to the Executive Officer, Anumanthanpatti Town Panchayat, fourth respondent herein to furnish the particulars of the encroachers. Although the fourth respondent furnished incomplete information, after filing an appeal on 15.12.2015 under Right to Information Act, before the third respondent, the particulars of the encroachers have been furnished by the third respondent in his proceedings dated 28.01.2016 bearing No.Na.Ka.No.1102/2015/Pe.3. Thereafter, when the representation has been made to the respondents 2 to 4 to take appropriate steps for removal of the encroachments, till date no steps have been taken by the respondents 2 to 4. Therefore, the petitioner has approached this Court with the above prayer.

4.The learned Counsel appearing for the respondents 5 to 9 referring to Section 183 of the Tamil Nadu District Municipalities Act, 1920, submitted that the council can also grant licence with certain conditions and restrictions as it may think fit, to the owner or occupier of any premises to put up verandas, balconies, sun-shades, weather-frames and the like, to project over a street, or in streets in which the constructions of arcades has been



sanctioned by the council, to put up an arcade; or to construct any step or drain-covering necessary for access to the premises. But that is not going to help the respondents 5 to 9 herein for the reason that the respondents 5 to 9 herein have not put up any sun-shade or balcony, it is almost a veranda like projection has been made encroaching half of the street causing complete prohibition of free human movement and also even small vehicles. Therefore, we are unable to agree with the arguments made by the learned Counsel appearing for the respondents 5 to 9 that the respondents 5 to 9 can get approval from the respondents 1 to 4. The learned Special Government Pleader appearing for the respondents 1 to 3 would fairly submit that already action has been taken by issuing notice to all the encroachers namely respondents 5 to 9 and others asking them to remove the encroachment which shows that the petition cannot get any approval from the fourth respondent under Section 183 of the Act.

5. In that view of the matter, we have no hesitation to direct the fourth respondent to remove the encroachments immediately and report before this Court on 24.09.2018. It appears that a request has already been made by the fourth respondent to the Inspector of Police, Uthamapalayam Police Station, to provide sufficient police protection. Therefore, the Inspector of Police, Uthamapalayam Police Station, is directed to provide sufficient police protection, if necessary, to facilitate the removal of encroachments.

6. When we are inclined to impose cost on the respondents 5 to 9, the learned Counsel appearing for the respondents 5 to 9 requested us not to impose cost as he would properly advise his clients to cooperate with the fourth respondent for removal of the encroachments.

7. With the above direction and observation, this Writ Petition is disposed of. No costs.

For reporting compliance, post this matter on 24.09.2018.

Sd/
Assistant Registrar(AE)

/True copy/

Sub Assistant Registrar(CS-II)

To

1. The District Collector,
Theni,
Theni District.

2. The Tahsildar,
Uthamapalayam Taluk,
Theni District.



3.The Assistant Director of Town Panchayat,
Poothipuram,
Palanichettipatti,
Theni District.

Copy to:

The Inspector of Police,
Uthamapalayam,
Theni District.

+1cc to Mr.R.J.Karthick, Advocate, SR.No.84501

W.P. (MD) No.18185 of 2018
17.09.2018

SRM
KK/SV/SAR-2/18.09.2018/4P-6C