



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **08.04.2019**

CORAM:

THE HONOURABLE **MR.JUSTICE K.KALYANASUNDARAM**

and

THE HONOURABLE **MRS.JUSTICE R.THARANI**

W.P. (MD) No.23654 of 2018

and

WMP (MD) No.21441 of 2018

Abdul Razack Habeeb Mohammed

...Petitioner

/Vs./

1.The District Collector,
Thoothukudi District,
Thoothukudi.

2.The District Revenue Officer,
Thoothukudi District,
Thoothukudi.

3.The Revenue Divisional Officer,
Tiruchendur Taluk,
Thoothukudi District.

4.The Tahsildhar,
Tiruchendur Taluk,
Thoothukudi District.

5.The Commissioner,
Kayalpattinam Municipality,
Kayalpattinam,
Thoothukudi District.

6.The Sub-Registrar,
Kayalpattinam,
Thoothukudi District.

7.Sapphire Garden,
Represented by its Partner,
H.A.C. Sahul Hammed

...Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the official respondents 1 to 4 to remove the encroachment made in Survey Nos.807/1, 807/3 and 807/4 at Kayalpattinam South, Tiruchendur Taluk, Thoothukudi District and restore the public pathway and Government land situated in the said survey numbers and also take necessary action against the seventh respondent for its illegal act



of encroaching Government land and obstructing public pathway situated within limits of the above said survey numbers and forbear the seventh respondent from selling the said public lands.

For Petitioner : Mr.Mark J Jackson
For R-1 to R-4 : Mr.V.R.Shanmuganathan
Special Government Pleader
For R-5 : Aayiram K.Selvakumar
Additional Government Pleader
For R-6 : Mr.M.Murugan
Government Advocate
For R-7 : Mr.K.Rajeshwaran

ORDER

This writ petition has been filed for issuance of writ of Mandamus directing the respondents 1 to 4 to remove the encroachment made in Survey Nos.807/1, 807/3 and 807/4 at Kayalpattinam South, Tiruchendur Taluk, Thoothukudi District

2.The case of the petitioner is that he is a resident of Kayalpattinam and the seventh respondent is a partnership Firm and they have formed a lay out in the name of Sapphire garden and selling the same to the general public. The allegation of the petitioner is that the public pathway and the Government lands had been encroached by the seventh respondent.

3.Mr.Mark J.Jackson, learned counsel for the petitioner would state that it would suffice if a direction is given to the fourth respondent to consider his representation dated 28.10.2018.

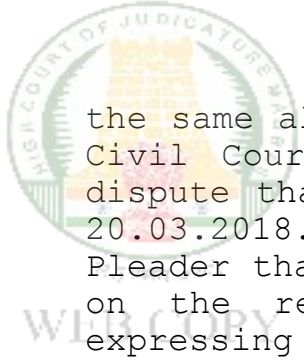
4.Mr.V.R.Shanmuganathan, learned Special Government Pleader would state that the fourth respondent has already sent a notice to the seventh respondent to attend an enquiry on 26.04.2019. He would further state that after conducting enquiry and survey, if any encroachment is found, the fourth respondent will take action in accordance with law.

5.Mr.K.Rajeshwaran, learned counsel appearing for the seventh respondent would contend that there is no encroachment made by the seventh respondent, as alleged by the petitioner. It is further stated that one Stalin Joseph has filed a suit before the District Munsif Court, Tiruchendur in O.S.No.45 of 2017 with the same prayer and he also filed a writ petition in W.P.(MD)No.3868 of 2018 for removal of encroachment in Survey No.807/3 (New No.468/1A). This Court, taking note of the fact that already a suit was instituted by the said Stalin Joseph, has dismissed the writ petition on 20.03.2018. It is further argued that the writ petitioner is set up by the said Stalin joseph and hence it is liable to be dismissed.

6.We have considered the rival submissions and perused the materials available on record.

<https://hcservices.ecourts.gov.in/hcservices/>

7.In the case on hand, it is not in dispute that in respect of



the same allegation, a suit is already pending before the competent Civil Court instituted by one Stalin Joseph. It is also not in dispute that a similar writ petition filed by him was dismissed on 20.03.2018. Since it is submitted by the learned Special Government Pleader that the fourth respondent has already issued a notice based on the representation of the petitioner, this Court, without expressing any opinion on the merits of the matter, directs the fourth respondent to pass orders in accordance with law, after providing an opportunity of hearing to the petitioner and other necessary parties, if any, and take further action. The entire exercise shall be completed within a period of six months from the date of receipt of a copy of this orders.

8. With the above directions, this writ petition is disposed of. No costs.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar (CS)

To

1. The District Collector,
Thoothukudi District,
Thoothukudi.
 2. The District Revenue Officer,
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Thoothukudi.
 3. The Revenue Divisional Officer,
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Tiruchendur Taluk,
Thoothukudi District.
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Kayalpattinam Municipality,
Kayalpattinam,
Thoothukudi District.
 6. The Sub-Registrar,
Kayalpattinam,
Thoothukudi District.
- +1cc to Mr. MARK J. JACKSON, Advocate, SR.No. 60239
+1cc to Mr. K. RAJESHWARAN, Advocate, SR.No. 59995
+1cc to M/s. Special Government Pleader, SR.No. 59955

W.P. (MD) No. 23654 of 2018

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