



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.09.2019

CORAM:

**THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE Mr.JUSTICE KRISHNAN RAMASAMY**

W.P.(MD).No.19428 of 2019

John Michael Raj

... Petitioner

V.

1.The District Collector,
Thoothukudi District,
Thoothukudi.

2.The General Manager,
Southern Railways,
Chennai.

3.The Divisional Manager,
Southern Railways,
Madurai.

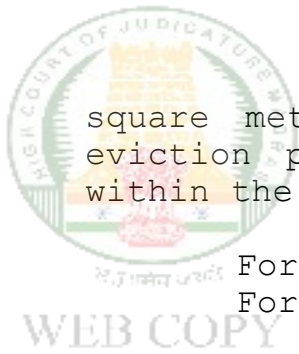
4.The Station Master,
Kurumbur Railway Station,
Kurumbur,
Tiruchendur Taluk,
Thoothukudi District.

5.The Estate Officer,
Southern Railways,
Works Branch,
Madurai.

6.Murugesu Pandian
The Ex-Municipal Councillor,
Naalumavadi,
Kurumbur,
Tiruchendur Taluk,
Thoothukudi District.

... Respondents

PRAYER: This petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to ~~evict the encroachment~~ on the railway land on an extent of 9.61



square meter in Kurumbur railway station by enforcing order of eviction passed by Estate Officer without any excuse whatsoever within the time to be fixed by this Court.

For Petitioner	: Mr.P.Senthur Pandian
For R1	: Mr.A.K.Baskarapandian
	Special Government Pleader

ORDER

(Order of this Court was made by **T.S.SIVAGNANAM, J**)

Heard Mr.P.Senthur Pandian, learned counsel appearing for the petitioner and Mr.A.K.Baskara Pandian, learned Special Government Pleader appearing for the first respondent.

2.By consent on both sides, this writ petition is taken up for final hearing.

3.Sixth respondent is a former Councillor of the Municipality stated to be also one of the encroachers. However, it appears that he is no longer interested in the matter.

4.Considering the limited relief sought for in the writ petition and the nature of the grievances expressed by the petitioner, we are inclined to dispose of the writ petition at this stage.

5.The petitioner seeks for a direction to the respondent to evict the encroachment on the Railway land in Kurumbur Railway Station by enforcing the order passed by the Estate Officer dated 11.02.2010. The encroacher viz., the sixth respondent has filed an appeal as against the order passed by the Estate Officer before the District Court, Thoothukudi in C.M.A.No.12 of 2012. The said appeal was dismissed for default on 09.07.2013. In spite of the dismissal of the appeal since the official respondent did not take any action, the petitioner has approached this Court by way of Writ Petition in W.P.(MD).No.18198 of 2017, which was disposed of by order dated 22.09.2017. The said order reads as follows:

"The respondents 1 to 4 have taken action for removal of encroachment. The fifth respondent challenged the proceedings before the learned Principal District Judge, Tuticorin in C.M.A.No.12 of 2010. According to the petitioner, the learned Principal District Judge dismissed the Civil Miscellaneous Appeal for default and the judgment has become final.

2.Since the matter was taken up before the civil Court, we do not find any reason to issue a writ of Mandamus, as prayed for by the petitioner. It is always open



to the respondents 1 to 4 to enforce the order passed by them earlier, in case there is no legal bar for such execution.

3.The writ petition is disposed of with the above observation. No costs."

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6.After the dismissal of the appeal, the petitioner approached the Railway Authority to implement the same. The Railway Authority sent a reply to the petitioner on 14.12.2018 intimating about the response given by the District Collector stating that there is local unrest, as there is a road side Temple, which has been constructed by encroaching upon the Government land. Further, the petitioner issued a notice of contempt through his counsel vide notice dated 24.02.2019. In reply to the said notice, the Senior Divisional Engineer/ Southern Railway, Madurai sent a reply to the petitioner's counsel on 01.03.2019 stating that the Railway administration had fixed the date for eviction on 04.04.2018 and 26.06.2018 respectively, but eviction could not be conducted, due to non-provision of security by the local Police in view of prevailing burning issue of public/people agitation on "Cavery Water" and Sterlite Issues" in Tuticorin District. Further, the petitioner's counsel was informed that all arrangements have been made to remove the encroachment and the date has been fixed as 19.03.2019, nothing had happened thereafter and eviction was not carried out. The District Collector by letter, dated 09.03.2019 forwarded the copy of the order passed by the High Court in the earlier writ petition (referred to above) to the Railway Administration and the Railway Administration also sent a reply to the counsel for the petitioner on 18.03.2019 stating that the eviction of the encroachment could not be conducted on 19.03.2019 due to non arrangement of local police Bandobast as the election model code of conduct was in force. It appears that the encroachment is a Temple. Recently, pursuant to the orders passed by the Division Bench, the Corporation of Chennai had carried out an extensive eviction work in the Perambur Paper Mills Road and similar road side Temple was removed by relocating the deity. In fact, the Division Bench had given an option to the so-called administrators of the road side Temple to relocate the idol. Since they did not co-operate with the authorities of the Corporation of Chennai, they have done the job and idol has been relocated and offending structure has also been removed. Therefore, merely because a place of worship has been established in a Government property, will not sanctify the encroachment.

7.Considering the present situation as elections are over, it is the proper for the authorities to take necessary action so as to give a quietus to the order of the Estate Officer dated 11.02.2010 in this regard, the District Collector shall extend necessary administrative support and the Superintendent of Police, Thoothukudi, shall also extend necessary bandabost, so as to retrieve the Railway property.



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W.P.(MD).No.19428 of 2019

8. With the above directions, this Writ Petition stands dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)

To:

1. The District Collector,
Thoothukudi District,
Thoothukudi.
2. The Superintendent of Police,
Thoothukudi District,
Thoothukudi.

+1 CC to Mr.P.SENTHUR PANDIAN, Advocate SR-85989.
+1 CC to GP SR-86141.

W.P. (MD) .No.19428 of 2019
09.09.2019

CS (30.09.2019) 4P 5C