



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

Writ Petition (MD).No.24810 of 2019

and

W.M.P(MD).Nos.21396, 21398 and 21400 of 2019

Bogaiah

... Petitioner

Vs.

1.The District Collector,
Tirunelveli District.

2.The Thasildar,
Kadayanallur,
Tirunelveli District.

3.The Commissioner,
Puliyankudi Municipality,
Tirunelveli District.

4.K.Anandaraj

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned order of the third respondent dated 25.10.2019 in Na.Ka.No.0286/09/2019/F1 and quash the same and further direct the respondents to issue patta to the petitioner's community for S.No.236/2 & 3 corresponding to Natham Town S.No.D29 2 and D29 3 of T.N.Puthukudi, Puliyankudi Municipality within a time frame fixed by this Court.

For Petitioner : Mr.N.Shyllappa Kalyan
For Respondents : Mr.A.Muthukaruppan
Additional Government Pleader
(for R1 & R2)
Mr.M.Rajarajan
Government Advocate (for R3)

O R D E R

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

Heard Mr.N.Shyllappa Kalyan, learned counsel appearing for the petitioner and Mr.A.Muthukaruppan, learned Additional Government



Pleader appearing for the respondents 1 and 2 and Mr.M.Rajarajan, learned Government Advocate for the third respondent.

2.The petitioner is aggrieved by an order of eviction passed by the third respondent Municipality. The order has been questioned by contending that it has been passed by misreading the direction issued by this Court in W.P(MD).No.2908 of 2019 dated 11.02.2019. The second ground of attack is that the said order cannot be enforced on the writ petitioner, because, he was not impleaded as a party in the earlier writ petition. The third ground of attack is that if the alleged classification of land is Government poramboke, then the Municipality has no jurisdiction to take action. The fourth ground of challenge is that the District Collector has passed an order dated 19.09.2019 without issuing any notice to the petitioner and based on such order, the Municipality is initiating action and the same is illegal.

3.After elaborately hearing the learned counsel for the parties, we partially accept with the contentions put forth by the petitioner. Firstly, the learned counsel is right in his submission that the order passed in W.P(MD).No.2908 of 2019 dated 11.02.2019 has been misinterpreted, because in the said writ petition the only direction given was to consider the representation of the fourth respondent, there was no positive direction to evict any person. Therefore, if the representation on being considered and if the District Collector was of the *prima facie* view that there is an encroachment in Government Promboke, then the alleged encroacher should have been put on notice. In fact this is the observation made by the Division Bench in its order dated 11.02.2019. The second ground raised by the petitioner also merits acceptance, because the petitioner was not made a party in the earlier writ petition. However, the Division Bench had safeguarded the interest of any third parties, because opportunity was directed to be given to the other interested parties, which should include the petitioner herein. However, this has not been adhered to by the District Collector when he passed the order dated 19.09.2019. The other contention is that the Municipality has no jurisdiction to initiate action. This contention is not tenable, because if the land is under the control of the local body, though classified as Government Poramboke land, the revenue authorities can authorise the Municipality or local body to take action for removal of encroachment. In fact, this is being done whenever there is an encroachment in a water body, direction is issued to the Public Works Department, which is in-charge of the water body. Therefore, this contention cannot be accepted. Further, the impugned proceedings cannot be taken as a show cause notice, because the Municipality is implementing the direction of the District Collector vide an order dated 19.09.2019. Therefore, unless and until, the petitioner was issued notice by the District Collector, he will not have a chance to put forth his contention, especially, when the



possession for over 60 years and also paying water tax, property tax and also have an electricity service connection.

4.In the light of the above technical defects, we are inclined to interfere with the impugned order, but we make it clear that we have not given a clean chit to the petitioner and are inclined to interfere with the impugned order only because there is a violation of principles of natural justice.

5.The learned Additional Government Pleader submitted that today (22.11.2019) Tenkasi has been formed as a new District and the first respondent District Collector, Tirunelveli, will not have jurisdiction any more.

6.In the light of the above, we allow this writ petition by setting aside the impugned notice and direct the District Collector, Tenkasi District, to issue show cause notice to the petitioner and others, who are similarly placed, who according to the revenue department are encroachers and grant them reasonable time to submit their objections. Before considering the objection and if found necessary, the District Collector shall direct a spot inspection to be conducted by his officers and thereafter, proceed in accordance with law.

7.The above direction be complied with, within a period of twelve weeks from the date of receipt of a copy of this order. Accordingly, this Writ Petition is allowed with the above directions. No costs. Consequently, connected Miscellaneous Petitions are closed. Copy of this order be communicated to the District Collector, Tenkasi District.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

Rmk

**Copy to : The District Collector,
Tenkasi District.**

To

1.The District Collector,
Tirunelveli District.



2.The Thasildar,
Kadayanallur,
Tirunelveli District.

+1 CC to Mr.T.S.R. VENKAT RAMANA, Advocate (SR-100844[F] dated
25/11/2019)

+1 CC to Mr.M. RAJARAJAN, Advocate (SR-100893[F] dated 25/11/2019)

+1 CC to SPL GP (SR-100912[F] dated 25/11/2019)

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MK (11.12.2019) 4P 6C