

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.10.2020

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

WP.No.14394 of 2020
and WMP.No.17872 of 2020

Vadamalai

... Petitioner

Versus

1.The Block Development Officer,
Veppur Panchayat Union,
Veppur, Kunnam Taluk, Perambalur District.

2.The Panchayat President,
Periya Venmani Village Panchayat,
Kunnam Taluk, Perambalur District.

... Respondents

PRAYER:- Writ petition filed under Article 226 of the Constitution of India prays to issue a Writ of Certiorari calling for the records of the first respondent dated 15.09.2020 vide proceedings bearing No.Na.Ka.2690/2020/Aa4 and consequential impugned order passed by the second respondent dated 23.09.2020 vide proceedings No.NIL and quash the same.

For Petitioner : Mr.G.Ilamurugu

For Respondents: Mr.R.Vijayakumar
Additional Government Pleader
for R1 and R2

ORDER

[Order of the Court was made by M.SATHYANARAYANAN,J.,]

The petitioner claims to be in possession of an agricultural land admeasuring an extent of 0.53.00 hectares comprised in S.No.171/1 and 171/5, Periya Venmani Village, Kunnam Taluk, Perambalur District and according to him, it is classified as 'Government Poromboke-Odai (Waterway) and it is mentioned by the Revenue Authorities, not by the respondents 1 and 2.

2. The learned counsel appearing for the petitioner would submit that the petitioner is in possession and enjoyment of the said land and using it purely for agricultural purpose for very many decades and to his shock and surprise, all of a sudden, the 1st respondent sent a communication dated 15.09.2020 to the 2nd respondent as to the encroachments in S.No.171/1 and 171/5, caused by six persons which include the petitioner also and also indicated that in the event of the 2nd respondent unable to remove the encroachments by invoking Section 131(2) of the Tamil Nadu Panchayat Act 1994, the files may be transferred to the Tahsildar, Kunnam for initiating appropriate action under the provisions of Tamil Nadu Land Encroachments Act, 1905. It is the further submission of the learned counsel for the petitioner that in terms of the said communication, the 2nd respondent has issued a notice dated 23.09.2020 calling upon the petitioner to remove the encroachments on or before 05.10.2020, failing which appropriate stringent action will be taken on 06.10.2020 and challenging the legality of the same, the petitioner is constrained to approach this Court by filing this Writ Petition.

3. The primordial submission made by the learned counsel appearing for the petitioner is that the impugned notices of the respondents 1 and 2 dated 15.09.2020 and 23.09.2020 respectively have no sanction of law at all and both the respondents had failed to take note of the fact that the petitioner is in possession and enjoyment of the land in question for very many decades and he is carrying on agricultural operation to eke out his livelihood and also seems to have minimum sustenance and hence prays for quashment of the impugned order.

4. Per contra, Mr.R.Vijayakumar, learned Additional Government Pleader who accepts notice on behalf of the respondents 1 and 2 would submit that action has been taken in accordance with law and as such, it is not open to the petitioner to make a complaint in this regard and prays for dismissal of this Writ Petition.

5. This Court has carefully considered the rival submissions and also perused the materials placed before it.

6. It is relevant to extract Section 131 (1) of the Tamil Nadu Panchayat Act, 1994:

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, ¹[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.

7. In 2007 (6) MLJ 399 (Sundari Vs. District Collector, Virudhunagar District, Virudhunagar and another), challenge was made by a person who was issued with notice under Section 131(2) of the Tamil Nadu Panchayat Act, 1994 and the Division Bench of this Court by taking into consideration the earlier decision reported in 2007 (4) MLJ 109 [V.Balamurugan V. The District Collector, Virudhunagar District, Virudhunagar], expressed his inclination to follow the said decision and observed as follows:

10. We do not find any substance in the above said submissions made by the learned counsel for the petitioner. A reading of Section 131(2) of the Tamil Nadu Panchayats Act, 1994 will make it abundantly clear that not only a power to remove encroachments made in or over the properties vested with or belonging to the panchayt is conferred on the executive authority of the

panchayat but also a duty is cast upon the executive authority of the panchayat to secure the removal of such encroachments. The Section specifically provides that it shall be the duty of the executive authority to initiate proceedings under the Act either suo motu or an obtaining a report from the Village Administrative Officer to remove such encroachments and secure the removal of encroachments.

11. It is obvious from the contents of Section 131 (2) of the Tamil Nadu Panchayats Act, 1994 that the later part of the same casts a duty on the revenue officials designated in this regard to initiate proceedings under the Tamil Nadu Land Encroachments Act, 1905 to secure the removal of such encroachments, if there is failure on the part of the executive authority to secure the removal of the encroachments within the period specified by the State Government by general or special notification. The mere fact that the revenue officials are enjoined with a duty to initiate proceedings under the Tamil Nadu Land Encroachments Act, 1905 on the failure of the executive authority of the panchayat to secure the removal of the encroachment within a specified period cannot be interpreted to mean the extinguishment of such a power or obligation of the executive authority of the village panchayat to secure the removal of encroachment in or over the properties vested with the panchayat. Therefore, the above said contentions raised by the learned counsel for the petitioner has got to be discountenanced.

8. In yet another decision, the scope of the above cited provision came up for consideration before the Division Bench of this Court in 2008 (1) MLJ 1134 (V.Balamurugan Vs. District Collector) and it is relevant to extract paragraphs 22 and 25 :

22. It is more beneficial to have a glance at Section 219, which reads thus:

219.Revision-(1) The Government may, after consulting the Inspector, Collector or such other officer or authority as they may deem fit, at any time, either suo motu or on application, call for and examine the record of any order passed or proceeding recorded under the provisions of this Act by-

(a) the Inspector or the Collector or any officer authorised by the Inspector or the Collector under Sub-section (2) or (3) of Section 218; or

(b) any officer authorized by the Government under Sub-section (1) of that Section or any officer empowered by them under sub-section (4) of that section or

(c) any other authority or officer; for the purpose of satisfying themselves as the legality or propriety of such order, or as to the regularity of such proceeding and pass such order in reference thereto as they think fit.

25. To sum up, a president of a Village Panchayat, who is the Executive Authority of the Panchayat, can very well issue a notice or order to the encroacher, seeking for his eviction, either on his own or on the report obtained from the Village Administrative Officer. In that process, if the so-called encroacher fails to comply with the notice or direction for removal of encroachment, as sought for by the President in his capacity as the Executive Authority has to seek for removal of such encroachment by approaching the Revenue Department Officials, who, in turn, can initiate proceedings under the provisions of the Tamil Nadu Land Encroachment Act, 1905, for removal of such encroachment. If any such notice is issued to the petitioner, he will be at liberty to work out his remedy by invoking sections 201, 202 and 219 of the Tamil Nadu Panchayats Act. Nothing would prevent him from seeking the remedy before the competent Civil Court, if he comes forward with the contention of title and enjoyment over the property, on the strength of a registered Sale Deed, if he so desires, and it is for the said Court to grant necessary reliefs, on the merits of the case.

9. In the light of the ratio laid down in the above cited decisions, the respondents 1 and 2 are having statutory powers to initiate appropriate action for removal of encroachments and in the light of the availability of alternative remedy as indicated in the decision reported in 2008 (1) MLJ 1134 (DB) cited supra, it is open to the petitioner to invoke Section 219 of the Tamil Nadu Panchayat Act, 1994 and if the petitioner is so advised, he is at liberty to invoke the same within a period of two weeks from the date of receipt of a copy of this order. Till such time, the respondents shall defer further decision in terms of the impugned notices.

10. In the result, the Writ Petition is dismissed, subject to the above observations. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

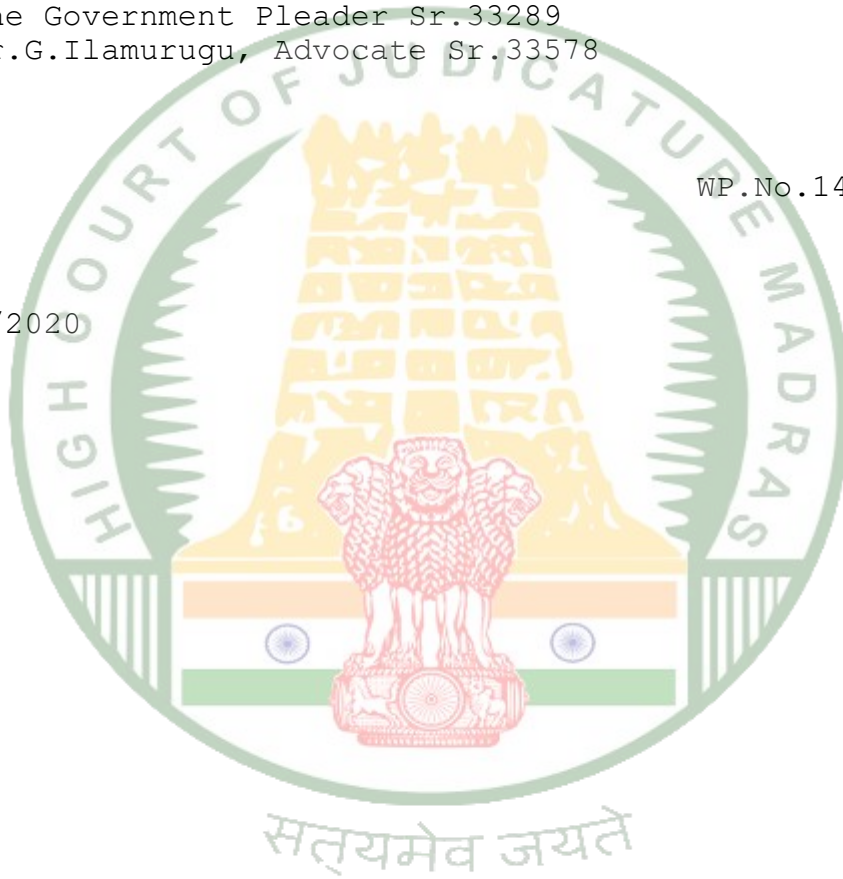
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+1cc to the Government Pleader Sr.33289
+1cc to Mr.G.Ilamurugu, Advocate Sr.33578

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sj[col]
srg 05/11/2020



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