

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.12.2020

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

WP.No.19773/2020
and W.M.P.No.24434/2020

R.Eswara Murthy

.. Petitioner

Versus

- 1.The District Collector,
O/o the District Collector,
Tirupur District.
- 2.The Thasildar,
Elavanthi Village, Vadugapalayam,
Palladam Taluk, Tirupur 641602.
- 3.The Commissioner of Panchayat Union,
Pongalur, Tirupur 641602.
- 4.The Village Administrator Officer,
Pongalur, Tirupur-641602.
- 5.The Panchayat President,
Elavanthi Village,
Tirupur 641602.

.. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Mandamus forbearing the

respondents from encroaching into the lands of the petitioner in S.F.No.136/1A and 136/3 of Elavanthi Village, Palladam Taluk, Tiruppur District in the process of expanding the existing itteri/cart track and not to proceed with the same without due survey.

For Petitioner : Mr.T.Gowthaman
For RR 1 to 4 : Mr.V.Jayaprakash Narayanan
Government Pleader

ORDER

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

The petitioner would submit that his family owns agricultural lands, comprised in S.F.Nos.131/1, 131/2, 131/3, 136/1A and 136/3 of Elavanthi Village, Palladam Tluk and thereafter in the year 1960, the land in S.F.Nos.136/1A and 136/3, are allotted to him by way of partition. The petitioner would state that there is a walking path in patta land, which was used by his relative to have access to their lands and there is already a cart track (itteri) on the western border, comprised in S.F.No.136/1A and that apart, the Government Map also shows a cart track, which is on the poramboke land comprised in S.F.No.136/2, lies adjacent to the property of the petitioner. The petitioner would further state that in the year 2012, attempts are being made by certain vested interests for expanding the said road to encroach upon the petitioner's

land. In this regard, a police complaint has also been lodged and a survey was also taken and vide proceedings of the 2nd respondent dated 17.05.2012, it was concluded about the existence of path in S.F.No.135/1, which is used as Tar land and itteri (Cart Track) and the property in S.F.No.135/2 was in the name of the petitioner's father and thereafter by way of succession, it was in possession of the petitioner and that apart, finding has also been given as to the possession of the petitioner in respect of S.F.No.136/1A, also.

2. It is a categorical stand of the petitioner that poromboke road in S.F.No.136/2 and a portion of which is located in southern side of the property in S.F.No.136/1A and to the north of S.F.No.136/3, it has been recorded that the point where both the survey numbers meet is shown as a path in the Village Register concerned. However according to the petitioner, the path is actually only in S.F.No.136/3 and after survey, some anomaly has also been set right. All of a sudden, to his shock and surprise, on 07.12.2020, about six to seven people came with an heavy machinery, started encroaching upon the petitioner's patta land in S.F.No.136/1A and apprehending illegal acts on the part of the concerned person, the petitioner also lodged a complaint dated 08.12.2020, on the

file of the Inspector of Police, Kamanaickenpalayam Police Station, Tirupur District, with copies marked to the official respondents.

3. The learned counsel appearing for the petitioner would submit that assuming for the sake of arguments, the petitioner had committed the acts of encroachments, still it can be removed only by resorting to due process of law and in the absence of the same, it is not open to the respondents to take law into their own hands and hence prays for appropriate orders.

4. Mr.V.Jayaprakash Narayanan, learned Government Pleader who accepts notice on behalf of the respondents 1 to 5 would submit that due process of law would be followed for removal of encroachments caused by the petitioner and apprehension expressed in this regard, is wholly unfound.

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

6. Though the petitioner prays for a larger, this Court in the light of

the above facts and circumstances and without going into the merits of the claim projected by the petitioner, either in his representation 08.12.2020, on the file of the Inspector of Police, Kamanaickenpalayam Police Station, Tirupur District, or in this Writ Petition, directs the petitioner to submit a detailed representation, by enclosing relevant and authenticated documents to the 3rd respondent, within a period of two weeks from the date of receipt of a copy of this order / uploading of the order in the website and upon receipt of the same, the 3rd respondent is directed to give an opportunity of personal hearing to the petitioner and thereafter consider and dispose of the said representation on merits and in accordance with law and pass appropriate orders, within a further period of four weeks thereafter and communicate the decision taken, to the petitioner. Till such time, shall defer further decision, as to the removal of the alleged encroachment in S.F.Nos.136/1A and 136/3 of Elavanthi Village, Palladam Taluk, Tiruppur District.

7. The Writ Petition stands disposed of. No costs. Consequently connected miscellaneous petition is closed.

[M.S.N.,J] [R.P.A.,J.]
18.12.2020

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M.SATHYANARAYANAN, J.,
AND
R.PONGIAPPAN, J.,

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Internet: Yes /No

Index: Yes/ No

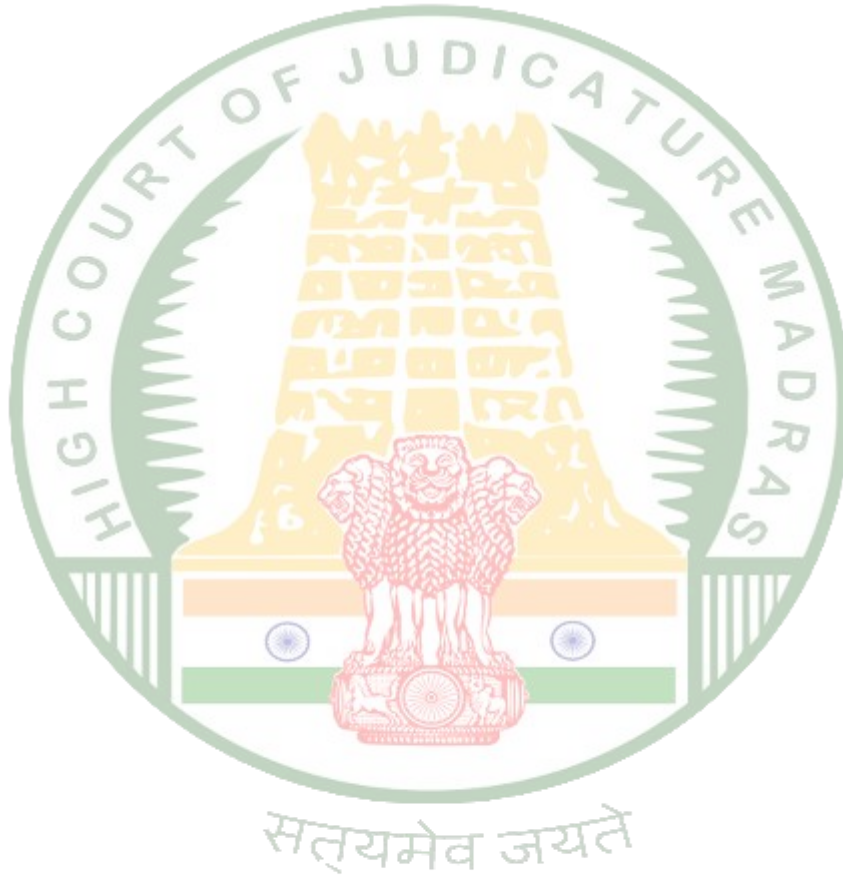
To

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