



WEB COPY

W.P. (MD) Nos. 4779 and 4788 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.03.2020

CORAM:

THE HONOURABLE **MR. JUSTICE S.S.SUNDAR**

and

THE HONOURABLE **MR. JUSTICE C.SARAVANAN**

W.P (MD) Nos. 4779 and 4788 of 2020

and

W.M.P. (MD) Nos. 4152 and 4157 of 2020

W.P. (MD) No. 4779 of 2020:-

Nagaraj : Petitioner

Vs.

1. The District Collector,
Dindigul District, Dindigul.

2. The Block Development Officer,
Dindigul Panchayat Union, Dindigul.

3. The Tahsildar,
Dindigul East Taluk, Dindigul. : Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari, to call for the records pertaining to the impugned Eviction Notice issued by the second respondent in Na.Ka.No.4575/2019-Voo2, dated 18.02.2020 and quash the same.

For Petitioner : Mr.T.Selvan

For Respondent : Mr.VR.Shanmuganathan
Special Government Pleader

W.P. (MD) No. 4788 of 2020:-

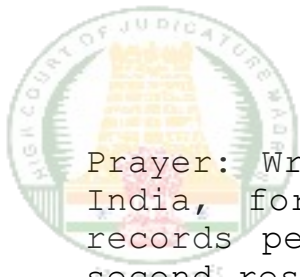
Palani Muniappan : Petitioner

Vs.

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Dindigul District, Dindigul.

2. The Block Development Officer,
Dindigul Panchayat Union, Dindigul.

3. The Tahsildar,
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For Petitioner :Mr.T.Selvan
For Respondent :Mr.VR.Shanmuganathan
Special Government Pleader

COMMON ORDER

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

These Writ Petitions are filed to quash the impugned eviction notice issued by the second respondent, dated 18.02.2020.

2.The petitioner in W.P.(MD)No.4779 of 2020 states that he is the owner of the house property in S.No.5/890. Similarly, the petitioner in W.P.(MD)No.4788 of 2020 states that he is the owner of the house property in S.No.5/876. Both petitioners have challenged the proceedings of Block Development Officer, which is a notice stated to have been issued under Section 131(2) of the Tamil Nadu Panchayats Act 1994.

3.The learned Additional Government Pleader, on instructions, stated that the respondents have received complaints regarding encroachments by private individual in a water body, which is classified as "Odai Poramboke". Pursuant to a direction of this Court in W.P.(MD)No.20927 of 2018, it appears that the respondents have initiated proceedings for evicting the unauthorised encroachments from water bodies. The Block Development Officer appears to have identified more than 120 encroachments based on survey report. Therefore, the second respondent / Block Development Officer, on the basis of the revenue records, issued the impugned notice, invoking the power under Section 131(2) of the Tamil Nadu Panchayats Act 1994. Section 131 of the Tamil Nadu Panchayats Act 1994 reads as follows:

"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 Union Council];



(b) make any hole or deposit any matter 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];

(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.

(2) It shall be the duty of the Village Administrative Officer of every revenue village to report on encroachments on properties vested in Village Panchayats or Panchayat Union Councils to the Executive Authority or the Commissioner concerned and to the officer of the Revenue Department, and it shall be the duty of the Executive Authority or the Commissioner concerned either suo motto or on obtaining a report from the Village Administrative Officer in this regard to institute proceedings under this Act and secure the removal of the encroachments within such time as may be specified by the Government by general or special order. If the removal of the encroachments has not been secured within the period specified in such order, the officers of the Revenue Department shall institute proceedings under the Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act III of 1905) and secure such removal.

[131-A. Prohibition of erection certain hoardings.- Notwithstanding anything contained in this Act or in any other law for the time being in force,-

(a) (i) on or after the date of the commencement of the Tamil Nadu Panchayats (Third Amendment) Act, 2000 (hereinafter in this Section referred to as the amendment

Act), no person shall erect any hoarding (other than



traffic sign and road sign) visible to the traffic on the road and which is hazardous and disturbance to safe traffic movement so as to adversely affect free and safe flow of traffic;

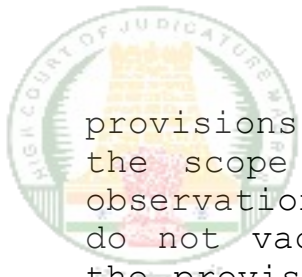
(ii) where any hoarding is erected in contravention of sub-clause (i), it shall be confiscated and removed by the Executive Authority without any notice; (b) (i) where any hoarding (other than traffic sign and road sign) visible to the traffic on the road is hazardous and disturbance to safe traffic movement so as to adversely affect free and safe flow of traffic and which is in existence immediately before the date of commencement of the Amendment Act, the Executive Authority shall by notice in writing, require the owner or any person in possession of such hoarding, to remove such hoarding within such time as may be specified in the notice:

Provided that such time shall not exceed fifteen days from the date of issue of such notice;

(ii) where the hoarding referred to in sub-clause (i) is not removed within the time specified in the notice, the Executive Authority shall, without further notice, remove such hoarding and recover the expenditure for such removal as an arrear of land revenue."

4. From the reading of Section 131(2) of the Act, this Court appreciate the contentions of the learned Counsel for the petitioner that the second respondent has no power to secure the removal of encroachments unless it is specified by the Government by general or special order. Power is not conferred upon the second respondent to initiate proceedings for eviction of unauthorised occupants or encroachers, even if it is a water body. In this case, no Government Order is produced before this Court to show that the Block Development Officer is authorised to issue a notice for removal of encroachments. It is further pointed out that action should be initiated only by the Executive Officer or the President of the Panchayat and not the Block Development Officer, who is not authorised to exercise any power under Section 131 of Tamil Nadu Panchayats Act and therefore, the impugned order is without jurisdiction. No machinery is provided under the Panchayats Act to remove encroachments. Power to remove encroachments in property belonged to local body is available under Tamil Nadu Public Premises Eviction of Unauthorised Occupants Act

5. By the impugned order, the Block Development Officer directed the petitioners to remove the encroachments within seven days. Further, it is stated that in case the encroachers do not remove the encroachments, action will be initiated as per the



provisions of Tamil Nadu Land Encroachments Act. Having regard to the scope of Section 131(2) of Tamil Nadu Panchayats Act, the observation of Block Development Officer that in case petitioners do not vacate the property, proceedings will be initiated under the provisions of Tamil Nadu Land Encroachments Act appears to be fair. However, the second respondent cannot initiate proceedings for eviction under Tamil Nadu Land Encroachment Act. In these circumstances, the impugned order regarding the direction to the petitioners to remove encroachments is liable to be quashed. However, the eviction proceedings appears to have been initiated pursuant to the direction of this Court in a public interest litigation petition.

6. In fine, the Writ Petition is allowed and the impugned order dated 18.02.2020 is set aside. The third respondent may now proceed for the removal of encroachments after following the procedure as prescribed under the provisions of Tamil Nadu Land Encroachments Act. This exercise shall be completed within a period of two months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

cmr

To

1. The District Collector,
Dindigul District, Dindigul.
2. The Block Development Officer,
Dindigul Panchayat Union, Dindigul.
3. The Tahsildar,
Dindigul East Taluk, Dindigul.

+1 CC to M/s. SPL.GP (SR-11575[F] dated 13/03/2020)

+1 CC to M/s. T.SELVAN, Advocate (SR-11654[F] dated 13/03/2020)

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TR (14.05.2020) 5P 6C