BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:09.07.2020
CORAM:
THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM
W.P(MD)No.7406 of 2020
and
W.M.P.(MD).No.6858 of 2020

P.Chinna Eluvan ... Petitioner

Vs.

The President,
Kodukkampatti Village Panchayat,
Melur Taluk,
Madurai District. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records relating to the impugned order passed by the respondent in his proceedings Oo.Ma.No.1/2020-21 dated 30.06.2020 and quash the same as illegal, arbitrary and in violation of principles of natural justice.

For Petitioner : Mr.B.Saravanan
For Respondent : Mr.VR.Shanmuganathan
Special Government Pleader

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ORDER

(Order of the Court was made by **M.SATHYANARAYANAN, J.**)

It is the case of the petitioner that his father was in possession and enjoyment of the landed property at S.F.No.174-5 admeasuring to an extent of 3 cents, situated at Murakilavanpatti, Kodukkampatti, Melur Taluk, Madurai District for the past six decades. While, his father was alive, he has also put a tiled house in which his family members have been residing eversince 1960. The petitioner, after demise of his father in the year 2010, succeeded his estate and continued to be in occupation and enjoyment of the said house.

2. It is also the claim of the petitioner that the said property was subjected to the statutory levy of tax also. The grievance expressed by the learned counsel appearing for the petitioner is that all of a sudden, the respondent has passed the impugned order in his Oo.Ma.No.1/2020-21, dated 30.06.2020, calling upon the petitioner to vacate and deliver the vacant possession of the lands in S.No.174-4, admeasuring to an extent of 12 ares classified as (Odai Poromboke) and Sy.No.174-5, admeasuring to an extent of 2 ares of cart track for the purpose of repairing and developing the water course.

3.Mr.B. Saravanan, learned counsel appearing for the petitioner has drawn to the attention of this Court to Section 131 (2) of the Tamil Nadu Panchayats Act, 1994 and would submit that the impugned notice of the respondent is not in consonance with the said provision, which mandates the certain procedure is to be followed and on the sole ground, the impugned notice/proceedings warrants interference.

4.During the course of arguments, this Court also put a query to the learned counsel appearing for the petitioner as to the Survey number in which the father of the petitioner came into possession and the petitioner succeeded his estate.

5.On instructions, the learned counsel appearing for the petitioner would submit that the petitioner is landing in Sy.No. 174-5 of Murakilavanpatti, Kodukkampatti, Melur Taluk, Madurai District.

6.The said submissions, on instructions is placed on record.

7.Per Contra, Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing on behalf of the official respondents would submit that for the purpose of taking action, the Executive Authority includes the Village president and as such, the impugned notice issued by the respondent is perfectly in order and even from the averments made in the affidavit filed in support of the writ petition, the father of the petitioner had encroached upon a public land and the petitioner while succeeding his estate continues to do so and hence, prays for dismissal of the writ petition.

8.This Court paid its best attention to the rival submissions made on either side and perused the documents carefully.

9.It is relevant to extract Section 131(2) of the Tamil Nadu Panchayat Act, 1994, for consideration.

> “131:**Prohibition against obstructions in or over public roads etc.**,
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> ....
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> (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 motu* 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."

The scope of the said provision came up for consideration before a Division Bench of this Court in the decision in ***2007(6) MLJ, Page No.399.*** (**Sundari Vs. District Collector, Virudhunagar District and another).** It is relevant to extract paragraph Nos.10 & 11.

"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 panchayat 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 encroachment 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."

10.In a subsequent decision reported in ***2008-4. LW 209 (DB)*** (**S.Neelakandan Vs. The Secretary to Government, Revenue Department, Government of Tamil Nadu, Fort St. George, Chennai and four others),** the decision reported in ***2007(6) MLJ, Page No.399.*** having been brought to the knowledge of this Court. The Division Bench in the said decision, after extracting the Section 131(2) of the Tamil Nadu

Panchayat Act, 1994 held as follows:-

> "29. As per the above said provisions, it shall be the duty of the Village Administrative Officer of every Revenue village to report on encroachments on properties vested in the Village Panchayats or Panchayat Union Councils to the Executive Authority, the Commissioner concerned or to the Officer of the Revenue Department. It is the duty of the Executive authority or the Commissioner concerned either suo motu or obtaining report from the Village Administrative Officer in this regard to institute the proceedings for removal of encroachments under the Tamil Nadu Panchayats Act, 1994. The said removal of encroachment shall be within such time as may be specified by the Government by general or special order.
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> 30. If the removal of encroachment has not been done within the period specified in the general or special order, the Officers of the Revenue Department shall institute the proceedings under the Tamil Nadu Land Encroachment Act, 1905 for removal of such encroachment."

11.In the light of the mandatory nature of Section 131(2) of the Tamil Nadu Panchayat Act, 1994, in the considered opinion of this Court, the impugned notice is not in order. Therefore, it warrants interference.

12.In the result, the Writ Petition is allowed. No costs. The impugned notice in Oo.Ma.No.1/2020-21, dated 30.06.2020 is hereby quashed and the Executive Authority is at liberty to follow the procedure contemplated under Section 131(2) of the Tamil Nadu Panchayat Act, 1994 and proceed further in accordance with law, as expeditiously as possible. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To
The President,
Kodukkampatti Village Panchayat,
Melur Taluk,
Madurai District.

W.P.(MD).No.7406 of 2020
09.07.2020

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