



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.07.2020

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THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

W.P. (MD) No.8077 of 2020

and

W.M.P. (MD) No.7500 of 2020

(Through Video conferencing)

M.Rajalakshmi

...Petitioner

-Vs-

1.The Thasildar
Srivilliputhur
Virudhunagar District.

2.Block Development Officer
Panchayat Union Office
Srivilliputhur
Virudhunagar District.

...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a writ of Certiorari, calling for the records pertaining to the impugned order passed in proceedings in Na.Ka.B1/60/2018 dated 02.06.2020, on the file of the 2nd respondent and quash the same as illegal and pass orders within a stipulated period fixed by this Court.

For Petitioner : Mr.J.Jeyakumaran

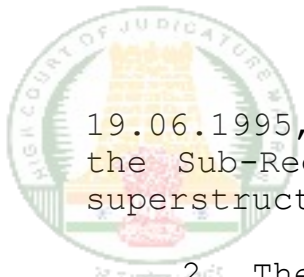
For Respondents : Mr.Aayiram K Selvakumar
Additional Govt. Pleader for R1

: Mr.S.Jeya Kumar for R2

ORDER

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

The petitioner claims that her father-in-law viz., Alagarsamy, had purchased certain extent of landed property in Survey No.283, situate in Thiruvannamalai Panchayat, Srivilliputhur North, Virudhunagar District, through a registered sale deed dated



19.06.1995, bearing Document No.1566/1995, registered on the file of the Sub-Registrar, Srivilliputhur and thereafter, he had put up a superstructure and it is also subject to statutory levies.

2. The petitioner would further aver that on 05.11.2019, the second respondent had issued a notice, for which, the husband of the petitioner has sent his response dated 22.11.2019, stating, among other things, that in Survey No.283, on a patta land, superstructure has been put up and he is residing with his family and adjacent to the said land, which is classified as a Government Poramboke land, a small tin sheet shed was put up and they were in enjoyment of the same and in terms of the order dated 05.11.2019, in Na.Ka.B 1/60/2018, they have removed the encroachment and also enclosed the photographs of the same.

3. The learned counsel appearing for the petitioner would further aver that despite such a communication, the second respondent has issued the impugned notice dated 02.06.2020, as if there is an encroachment in Survey No.282/4, admeasuring to an extent of 0.00.10 sq.m. and 0.00.12 sq.m. in Survey No.282/5, in the form of permanent and semi-permanent construction and called upon the husband of the petitioner to remove the same within a period of 10 days from the date of receipt of that notice, failing which, immediate and necessary action will be taken to remove the encroachment.

4. The primordial submission made by the learned counsel appearing for the petitioner is that it is the categorical stand of the husband of the petitioner, who is no more, that there is no encroachment caused by them in Survey Nos.282/4 and 282/5, despite the said fact has been pointed out, the impugned notice came to be passed without due and proper application of mind and prays for interference.

5. Per contra, Mr.Aayiram K Selvakumar, learned Additional Government Pleader appearing for the first respondent would submit that action for removal of encroachment is being followed strictly in accordance with law after taking note of the relevant materials and hence prays for dismissal of this writ petition.

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

7. It is relevant to extract Section 131 of the Tamil Nadu Panchayats 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 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 ²[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.'

8. In the light of the above facts and circumstances, the second respondent is directed to treat the impugned notice dated 02.06.2020, as a show cause notice, for which, the petitioner is granted liberty to submit a detailed representation by enclosing relevant and authenticated documents within a period of three weeks from the date of receipt of a copy of this order and upon receipt of the same, the second respondent is directed to consider and pass appropriate orders in accordance with law within a further period of four weeks thereafter and communicate the decision taken to the petitioner. The second respondent, till such time, shall defer the further proceedings in terms of the notice dated 02.06.2020. It is also made clear that the petitioner, till the disposal of the representation by the second respondent, shall not create any third party rights in respect of the land in question.

9. This writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

vsm

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

1.The Thasildar
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Virudhunagar District.

2.Block Development Officer
Panchayat Union Office
Srivilliputhur
Virudhunagar District.

Order made in

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