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W.P.(MD).No.9624 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.08.2020

CORAM :

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.P. (MD) .No.9624 of 2020

and

W.M.P. (MD) .Nos.8661 and 8664 of 2020

Poiyazhimuthu

... Petitioner

Vs.

1.The District Collector,
Thoothukudi District,
Thoothukudi.

2.The Block Development Officer (Village Panchayat),
Kayathar Panchayat Union,
Thoothukudi District.

3.The Special Officer,
Mudukkalangkulam Panchayat,
Mudukkalangkulam,
Kayathar Taluk,
Thoothukudi District.

4.The President,
Mudukkalangkulam Panchayat,
Mudukkalangkulam,
Kayathar Taluk,
Thoothukudi District.

5.V.Chinnachamy

... Respondents

Prayer: The Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the impugned communication dated 30.06.2020 passed by the fourth respondent under Reference No.01/2020 and subsequently quash the same as arbitrary and devoid of merits forthwith.

For Petitioner

: Mr.S.Palani Velayutham

For R1

: Mr.R.Murugan,

Additional Government Pleader

For R2 to R4

: Mr.C.M.Mari Chelliah Prabhu

Additional Government Pleader



O R D E R

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

The petitioner claims to be a permanent resident of Mudukkalangkulam Village, Kayathar Taluk, Tuticorin District and in the affidavit filed in support of this writ petition, the petitioner, stating among other things that there are allegations to the effect that he had encroached upon the Natham land in Survey No.822/9 situated in the said village and he has sent his response dated 26.03.2019, stating among other things that it is not at all encroached by him and it has been used as a vacant site and was only tying the cattle and without taking note of the same, the fourth respondent, in the impugned communication dated 30.06.2020, straight away ordered the removal of alleged encroachment and since due process of law have not been properly followed, the petitioner is constrained to approach this Court by filing the writ petition.

2. The learned counsel appearing for the petitioner would submit that the fourth respondent is having an axe to grind for the reason that the petitioner has opposed the candidature of the elected Local Body President and with *mala fide* intention and oblique motive only, the impugned notice has been issued and hence prays for interference.

3. The learned Additional Government Pleader appearing for the respondents 2 to 4 would submit that even in the impugned notice, it has been clearly indicated that due process of law would be followed and as such, the petitioner cannot express any grievance and prays for dismissal of this writ petition.

4. This Court has carefully considered the rival submissions and perused the materials placed on record.

5. It is relevant to extract Section 131 of the Tamil Nadu Panchayats Act, 1994.

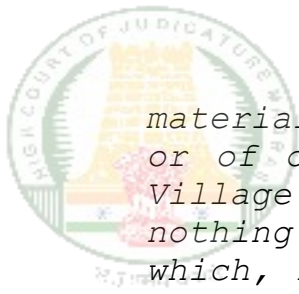
131. Prohibition against obstructions in or over public roads, etc.-

(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.

6. This Court, taking into consideration the above facts and circumstances and without going into the merits of the claim projected by the petitioner, either in the representation or in this writ petition, directs the fourth respondent to treat the impugned notice as a show cause notice, for which, the petitioner is granted liberty to submit his response with supporting, 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 fourth respondent is directed to consider the same on merits and in accordance with law and pass appropriate orders, within a further period of four weeks. Till such time, the fourth respondent shall defer further action in terms of the impugned notice dated 30.06.2020. It is made clear that the petitioner, till the disposal of the representation to be submitted to the fourth respondent, shall not be deemed to have any third party interest in respect of the land in



question. The Writ Petition stands disposed of accordingly. No costs. Consequently, the connected Miscellaneous Petitions are closed.

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Sd/-

Assistant Registrar

/ /2020

Sub Assistant Registrar(CS)

Akv

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 District Collector,
Thoothukudi District,
Thoothukudi.
- 2.The Block Development Officer (Village Panchayat),
Kayathar Panchayat Union,
Thoothukudi District.
- 3.The Special Officer,
Mudukkalangkulam Panchayat,
Mudukkalangkulam,
Kayathar Taluk,
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Mudukkalangkulam,
Kayathar Taluk,
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AP (31/08/2020) 4P 5C