



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.09.2020

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

WEB COPY

W.P. (MD)No.11051 of 2020

and

W.M.P(MD) .No.9683 of 2020

V.Dinakaran

... Petitioner

Vs.

1.The District Collector,
Sivagangai District.

2.The Revenue Divisional Officer,
Devakottai, Sivagangai District.

3. The Tahsildar,
Thirupathur Post and Taluk,
Sivagangai District.

4. The Zonal Deputy Tahsildar,
Thirupathur Post and Taluk,
Sivagangai District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, thereby calling for the records of the fourth respondent dated 24.08.2020 and quash the same as illegal and arbitrary.

For Petitioner : Mr. P.Ganapathi Subramanian

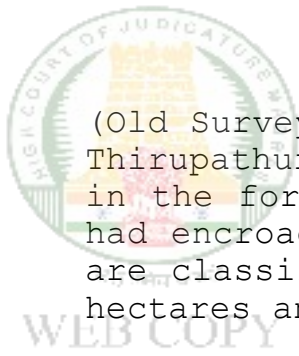
For Respondents : Mr. B.Bagavathi,
Government Advocate

* * * * *

O R D E R

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

The Writ petitioner was granted patta in respect of the land admeasuring to the extent of 0.01.3 hectares in Survey No.267/24
<https://hcservices.ecourts.gov.in/hcservices/>



(Old Survey No.267) classified as riotwary site, Kundrakudi village, Thirupathur Taluk, Sivagangai District and from the materials placed in the form of affidavit as well as the typed set of documents, he had encroached upon the land in Survey Nos.267/23 and 267/22, which are classified as Sarkar Poramboke to the extent of 0.01.0, 0.00.60 hectares and also constructed a wash room and portico.

2. The Zonal Deputy Tahsildar, Thirupathur, Sivagangai District, has invoked the provisions of Tamil Nadu Land Encroachment Act, 1905, has issued the impugned notice under Section 7 of the said Act dated 24.08.2020 and challenging the legality of the same, the present Writ petition is filed.

3. The learned Counsel appearing for the Writ petitioner would submit that he is ready to remove the encroachment in Survey No.267/22 and since the land in Survey No.267/23 is classified as Village Natham, the provisions of Tamil Nadu Land Encroachment Act, cannot be invoked and prays for appropriate orders.

4. Per contra, Mr.B.Bagavathi, learned Government Advocate, would submit that there cannot be any order of restraint, forbearing the respondents from exercising their statutory functions and since due process of law is followed for the removal of encroachment, the petitioner cannot be expressed any grievance and therefore, prays for dismissal of the Writ petition.

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

6. The Writ petitioner was shown benevolence in the form of grant of patta in respect of the land admeasuring to the extent of 0.01.35 hectare in Survey No.267/24 (Old Survey No.267), Kundrakudi village, Thirupathur Taluk, Sivagangai District, and not satisfied with the same, he encroached upon the lands in Survey Nos.267/23 and 267/22 of the said village and also put up a portico and toilet.

7. The Zonal Deputy Tahsildar, Thirupathur Taluk, Sivagangai District, has taken note of the fact and initiated proceedings in the light of the power conferred upon him under Tamil Nadu Land Encroachment Act, 1905, by issuing section 7 notice dated 24.08.2020.

8. As rightly pointed out by Mr.Bagavathi, learned Government Advocate, appearing for the official respondents, there cannot be any order of restraint, forbearing the official respondents from exercising their powers under Statute by recourse to due process of law and that apart, the Writ petitioner has also having an effective remedy under Section 10 of the Tamil Nadu Land Encroachment Act, 1905, this Court finds no merit in this Writ petition and accordingly, this Writ petition is dismissed, subject to the above



observations. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

WEB COPY

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

pkn

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,
Sivagangai District.
- 2.The Revenue Divisional Officer,
Devakottai, Sivagangai District.
3. The Tahsildar,
Thirupathur Post and Taluk,
Sivagangai District.
4. The Zonal Deputy Tahsildar,
Thirupathur Post and Taluk,
Sivagangai District.

W.P. (MD) No.11051 of 2020

07.09.2020

KK(16.09.2020) 3P 5C