



WEB COPY

W.P.(MD) No.12382 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **23.09.2020**

CORAM

THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

W.P. (MD) No.12382 of 2020

and

W.M.P. (MD) No.10591 of 2020

Mala

... Petitioner

-Vs-

- 1.The District Collector,
Thoothukudi District,
Thoothukudi.
- 2.The Tahsildar,
Srivaikundam Taluk,
Thoothukudi District.
- 3.The Block Development Officer,
Karunkulam Panchayat Union,
Thoothukudi District.
- 4.The Panchayat President,
Alantha Village Panchayat,
Karunkulam Panchayat Union,
Thoothukudi District.

5.Kumar

... Respondents

Prayer: Writ Petition - filed under Article 226 of Constitution of India, to issue a writ of Certiorari, to call for the records relating to the impugned order dated 14.09.2020 in proceedings letter No.A1/1/2020 of the fourth respondent and quash the same as illegal.

For Petitioner	:	Mr.M.Prabhu
For R1 & R2	:	Mr.B.Bagavathi Government Advocate
For R3 & R4	:	Mr.S.Angappan Government Advocate



ORDER

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

Mr.B.Bagavathi, learned Government Advocate accepts notice on behalf of the first and second respondents and Mr.S.Angappan, learned Government Advocate, accepts notice on behalf of the third and fourth respondents. By consent of both parties, this writ petition is taken for final disposal at the stage of admission itself.

2. The writ petitioner claims that the land and property comprising in survey No.905A/1B7), Alantha Village, Srivaikundam Taluk, Thoothukudi District, originally belonged to her ancestors. By way of succession, the petitioner is in possession and enjoyment of the land and structure along with her family members. The petitioner along with his brother namely, Murugan, had filed a suit in O.S.No.37 of 2019 on the file of the Court of District Munsif at Srivaigundam against the fifth respondent / first defendant and the respondents 1 to 3 as other defendants for the relief of permanent injunction restraining the defendants or their men or agents from interfering with the peaceful possession and enjoyment of the suit property and as of now, no interim orders are in operation.

3. The fourth defendant, who is arrayed as second respondent in this writ petition, has filed a written statement, dated 02.08.2019 contending among other things that in respect of this pathway dispute, the second respondent initiated proceedings under Section 145 Cr.P.C., and the petitioner, who is also one of the plaintiffs, did not respond to the same and as such she is not entitled for any relief.

4. The learned counsel for the petitioner has drawn the attention of this Court to the communication of the second respondent, dated 31.07.2020 in Na.Ka.No.A8/7546/2018 addressed to the Deputy Superintendent of Police, Maniachi praying for police protection to cause removal of the encroachment in Survey Nos.905A/1A2, 1B2 and also pointed out to initiate proceedings under Section 145 Cr.P.C., and he would further added that the fourth respondent vide impugned communication, dated 14.09.2020 called upon the petitioner herein to remove the offending construction / encroachment within a period of one week i.e., between 14.09.2020 to 20.09.2020, failing which the encroachment will be removed with the aid of the Police.

5. The primordial submission made by the learned counsel for the petitioner is that since the factual dispute is involved to the ownership of the said property and further submitted that O.S.No.37 of 2019 is also pending on the file of the District Munsif Court,



Srivaikundam, in which the respondents 1 to 3 are also parties, in all fairness they should have tied their hands till the disposal of the appeal and prays for appropriate orders.

6. The learned counsel appearing for the official respondents would submit that based on the relevant records, it has been found that the petitioner is in occupation of the public land and earlier eviction proceedings was accepted, which results in invocation of proceedings under Section 145 Cr.P.C., and despite notice of proceedings has been given, the petitioner did not participate in the enquiry and due process of law has been followed to remove the encroachment and prays for dismissal of this petition.

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

8. It prima facie appears that the alleged title of the property is also under dispute and admittedly, the petitioner along with his brother filed an appeal in O.S.No.37 of 2019 on the file of the District Munsif Court, Srivaikundam only for permanent injunction. A perusal of the written submission filed by the second respondent, who is also arrayed as fourth defendant in the suit, would also disclose about the invocation of the proceedings under Section 145 Cr.P.C., and despite notice being served, the petitioner did not participate in the enquiry and however, the said practice is seriously disputed by the learned counsel for the writ petitioner.

9. It is relevant to extract 131(2) of the Tamil Nadu Panchayats Act, 1994 hereunder:-

"131...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 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 and secure such removal."

10. This Court taking into consideration the above facts and circumstances, directs the fourth respondent to follow due process of law and take appropriate action as to the alleged removal of encroachment said to have been caused by the petitioner as expeditiously as possible and communicate the decision taken to the petitioner as well as the fifth respondent. This writ petition is



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

Sd/-

Assistant Registrar (AS)

WEB COPY

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Ta

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 Tahsildar,
Srivaikundam Taluk,
Thoothukudi District.
- 3.The Block Development Officer,
Karunkulam Panchayat Union,
Thoothukudi District.
- 4.The Panchayat President,
Alantha Village Panchayat,
Karunkulam Panchayat Union,
Thoothukudi District.

+1 CC to M/s.GP (SR-17977[F] dated 24/09/2020)

W.P. (MD) No.12382 of 2020
23.09.2020

SCR(CO)
AP(05/10/2020) 4P 6C