



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.12388 of 2020
and
W.M.P.(MD)No.10593 of 2020

Ganapathi

... Petitioner

-Vs-

1.The Tahsildar,
Kayathar,
Thoothukudi District.

2.The Block Development Officer,
Kayathar,
Thoothukudi.

... Respondents

Prayer: Writ Petition - filed under Article 226 of Constitution of India, to issue a writ of Mandamus, to forbear the respondents from taking any action or proceedings in respect of Survey No.341/2, North Ilanthakulam Village, Kayathar Taluk, Thoothukudi District without following due process of law.

For Petitioner : Mr.G.Prabhu Rajadurai
for Mr.L.Suthakaran

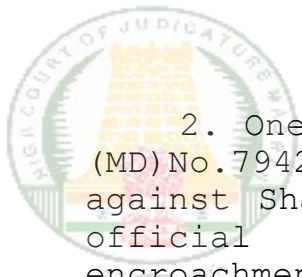
For R1 : Mr.M.Muthugeethaiyan
Special Government Pleader

For R2 : Mr.M.Marichelliah Prabhu
Additional Government Pleader

ORDER

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

Mr.M.Muthugeethaiyan, learned Special Government Pleader accepts notice on behalf of the first respondent and Mr.M.Marichelliah Prabhu, learned Additional Government Pleader, accepts notice on behalf of the second respondent. By consent of both parties, this writ petition is taken for final disposal at the stage of admission itself.

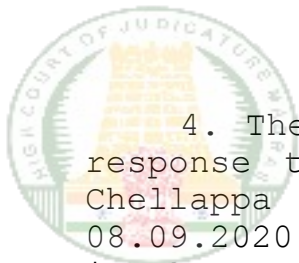


2. One Mr.P.Marimuthupandian, in an earlier occasion filed W.P. (MD)No.7942 of 2020 against the official respondents as well as against Shanmugaraj, Chellappa and Ganapathy praying to direct the official respondents to take steps to remove the alleged encroachment made by the above said private respondents in Survey No.341/2, North Ilanthaikulam Village, Kayathar Taluk, Thoothukudi District by considering the representation, dated 08.05.2020 within the stipulated time. During the course of argument in that writ petition, it was submitted that though steps have been taken to remove the encroachment, on account of law and order problem, removal of the encroachment could not be proceeded with and this Court has taken note of the same and disposed of the said writ petition on 14.08.2020. It is relevant to extract paragraph Nos.4 and 5 of the said order hereunder:-

"4.The immediate official superior of the third respondent is the second respondent and above him, may be, the District Revenue Officer as well as the District Collector and therefore, it is for the said immediate official superiors to see that their subordinate officials perform their duty properly in accordance with law and also in line with the relevant administrative guidelines/instructions. While causing the removal of encroachment, any law and order problem, or public order problem is caused / created, it is for them to approach the concerned police officials to give them proper and sufficient protection to discharge their duties and responsibilities.

5.It is culled out from the submissions of the learned Special Government Pleader appearing for the respondents 1 to 3 that admittedly, there are encroachment to instruct the concerned officials to cause removal of encroachments and if they fail to discharge their lawful duties, it may be open to the first respondent or the immediate official superiors concerned to recommend for appropriate departmental action. The exercise of removal of encroachment in accordance with law, as far as possible, be completed within a period of eight weeks from the date of receipt of a copy of this order and the decision taken / orders passed in this regard, shall also be communicated to the petitioner as well as the private respondents and other persons concerned, if any."

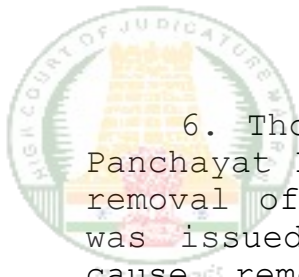
3. The second respondent in compliance of the said order has issued notice, dated 03.09.2020 in T3/3461/2020 to the private respondents in that petition as to the classification of the land in Ilandaikulam Village in Survey No.341/2 is 'Sarkar Land' and calling upon them to remove the same within a period of fifteen (15) days from the date of receipt of that notice.



4. The learned counsel for the petitioner would submit that in response to the said notice, the addressees namely, Shanmugaraj, Chellappa and Ganapathy had submitted their response dated 08.09.2020 and apprehending that the second respondent is going to invoke Section 131(2) of the Tamil Nadu Panchayat Act, 1994, they sought that reasonable opportunity of personal hearing ought to have been provided to the said persons and then, appropriate orders shall be passed and till such time, shall forbear the second respondent from proceeding further in view of the impugned proceedings. The learned counsel for the petitioner in respect of his submissions, has also placed reliance on the judgment in **G.Radhakrishnan vs. The President, Edayakottai** [(2008) 1 MLJ 1132]. It is relevant to extract paragraph No.25 of the said order hereunder:-

"25. To sum up, a President of a Village Panchayat, who is the Executive Authority of the Panchayat, can very well issue a notice or order to the encroacher, seeking for his eviction, either on his own or on the report obtained from the Village Administrative Officer. In that process, if the so-called encroacher fails to comply with the notice or direction for removal of encroachment, as sought for by the President in his capacity as the Executive Authority of the Panchayat, thereafter, the Executive Authority has to seek for removal of such encroachment by approaching the Revenue Department Officials, who, in turn, can initiate proceedings under the provisions of the Tamil Nadu Land Encroachment Act, 1905, for removal of such encroachment. If any such notice is issued to the petitioner, he will be at liberty to work out his remedy by invoking Sections 201, 202 and 219 of the Tamil Nadu Panchayats Act. Nothing would prevent him from seeking the remedy before the competent Civil Court, if he comes forward with the contention of title and enjoyment over the property, on the strength of a registered sale deed, if he so desires, and it is for the said Court to grant necessary reliefs, on the merits of the case."

5. Per contra, the learned Special Government Pleader appearing for the first respondent points that the writ petition is filed by the petitioner, who is none other than the Village Panchayat President of North Ilanthaikulam Village and it appears from his affidavit filed in support of the writ petition that he supports the encroachment in the form of temple upon a public land and also has drawn the attention of this Court to other admissions in the affidavit as well as in the representation, dated 08.05.2020 and he would submitted that admittedly, the temple has been located in the public land and it is not a patta land, even as per the stand made in the said representation and therefore, opportunity of personal hearing to the addressees / respondents in that writ petition would normally be an empty formality and no useful purpose will be served in doing so and prays for dismissal of this writ petition.



6. Though it is open to the petitioner, who is also a Village Panchayat President, in his capacity as Executive Authority to cause removal of the encroachment, he himself filed writ petition as he was issued with the impugned notice by the second respondent to cause removal of the encroachment and therefore, the second respondent has rightly took such action.

7. The primordial submission made by the learned counsel for the petitioner is that since the temple is located for time immemorial / decades together, some right has been created. Further, it is open to the concerned persons, who may be in-charge of the administration of the temple, to seek appropriate remedy and the said facts / issues cannot be adjudicated by this Court under Article 226 of the Constitution of India.

8. Now a days, it has become a fashion to argue that the respondents alone shall follow due process of law, overlooking the fact that the writ petitioners / private persons / entities are also in equal obligation to follow the law, rules and regulations. In the light of the above facts and circumstances, this Court is of the considered view that there is no necessity to offer an opportunity of personal hearing. It is also a well settled position of law that there is always a presumption in favour of the administration that it exercises powers in good faith **[2002 (1) S.C.C. 188 (UNION OF INDIA v. ASHUTOSH KUMAR SRIVASTAVA)]**.

9. In the considered opinion of this Court, the second respondent has exercised his statutory powers with four corners of law and as such interference is not warranted in respect of the impugned notice issued by him. In the result, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (A.S)

// 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

1. The Tahsildar,
Kayathar,
Thoothukudi District.

2. The Block Development Officer,
Kayathar,
Thoothukudi.

+1 CC to Mr.I.SUTHAKARAN, Advocate SR-17936.

+1 CC to the SPL GP SR-17966.

W.P. (MD) No.12388 of 2020
23.09.2020

SCR(CO)
CS(05.10.2020) 5P 5C