



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE **N.KIRUBAKARAN**
AND
THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

W.P. (MD)No.17110 of 2020
and
W.M.P. (MD)No.14271 of 2020

V.Alagammal

: Petitioner

Vs.

1.The District Collector,
Thoothukudi District, Thoothukudi.

2.The Commissioner,
Block Development Officer (Va.Oo),
Pudur Union, Thoothukudi District.

3.The Tahsildar,
Vilathikulam Taluk,
Thoothukudi District.

4.The Executive Officer and Panchayat President,
Maniyakaranpatti Panchayat,
Vilathikulam,
Thoothukudi District.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Ceriorarified Mandamus to call for the records pertaining to the impugned notice of the 4th respondent dated 12.11.2020 in Lr.No.02/2020 and quash the same and consequently, to forbear the respondents from interfering with the petitioner's peaceful possession and enjoyment of the property situated in S.No.259/58, situated in Melakumarasakkanapuram, Maniyakaranpatti Panchayat, Thoothukudi District.

For Petitioner : Mr.P.Jeyasankar

For Respondents : Mr.Muthugeethaiyan,
Special Government Pleader



ORDER

(Order of the Court was made by **B.PUGALENDHI, J.**)

This writ petition is filed by the petitioner as against the notice issued by the 4th respondent under Sections 131(2) & 222 of the Tamil Nadu Panchayats Act, 1994, in and by which, the 4th respondent has directed the petitioner to remove the encroachments put up by her in S.No.259/22, to an extent of 0.4272 Ares in Melakumarasakkanapuram, Maniyakaranpatti Panchayat.

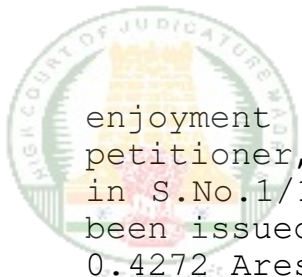
2. According to the petitioner, the property in Old S.No.1/143 and New S.No.259/58, situated at Melakumarasakkanapuram, Maniyakaranpatti Panchayat, Thoothukudi District, was purchased by her father, Gothandaraman and his brother, Krishnasamy, vide a joint registered sale deed dated 22.12.1959 in Doc.No.1-290-383-384-2483 of 1959. After the demise of her father, the petitioner and her family members are enjoying the share of the said Gothandaraman in the property, as his legal heirs. One of her neighbors, who is inimical to the petitioner, has filed a writ petition in W.P(MD) No.8532 of 2020 before this Court alleging that the petitioner has encroached upon the panchayat property and has obtained an order behind her back, based on which, the impugned notice came to be issued, without affording her an opportunity of personal hearing.

3. Heard the learned Counsel appearing for the petitioner and Mr.Muthugeethaiyan, learned Special Government Pleader, who took notice on behalf of the respondents.

4. This Court, by order dated 03.08.2020, has disposed of the writ petition in W.P.(MD)No.8532 of 2020 in the following terms:

"5. Though the petitioner prays for a larger relief, this Court, without going into merits of the case projected by the petitioner, either in his affidavit filed in support of the Writ Petition or in his representations, directs the third and fourth respondents to conduct a joint inspection of the land in S.No.259/22, Melakumarachekkanapuram, Vilathikulam Taluk, Thoothukudi District, after putting the petitioner, the fifth respondents and other persons concerned on notice and depending upon the outcome result of the inspection, take appropriate action in accordance with law by adhering to the principles of natural justice and complete the process within 10 weeks from the date of receipt of a copy of this order and communicate the decision taken to the petitioner, fifth respondent and any other persons concerned."

5. The impugned notice was issued by the Executive Officer and Panchayat President of Maniyakaranpatti Panchayat, Vilathikulam, Thoothukudi District, as directed by this Court. The petitioner has claimed that her father along with his brother has purchased the subject property in the year 1959 itself and it is in their



enjoyment for the past six decades. Even according to the petitioner, the property purchased by her father and his brother is in S.No.1/143 and New S.No.259/58, whereas, the impugned notice has been issued by the 4th respondent for an encroachment to an extent of 0.4272 Ares in S.No.259/22, which is classified as a Panchayat Road.

6. The impugned notice has been issued by the 4th respondent under Sections 131(2) & 222 of the Tamil Nadu Panchayats Act, 1994. For better appreciation, Section 131(2) of the Act is extracted as follows:

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

(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 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."

Section 222 of the Act reads as follows:

"222. Time for complying with notice, order, etc. and power to enforce in default.-

(1) Whenever by any notice, requisition or order under this Act, or under any rule, bye-law or regulation made thereunder, any person is required to execute any work, to take any measures or to do anything, a reasonable time shall be named in such notice, requisition or order within which the work shall be executed, the measure taken or the thing done.

(2) If such notice, requisition or order is not complied with within the time so named:-

(a) the Executive Authority of the Village Panchayat or the Commissioner or the Secretary, as the case may be, may cause such work to be executed, or may take any measure or do anything which may, in his opinion, be necessary for giving due effect to the notice, requisition or order, and



(b) if no penalty has been specially provided in this Act for failure to comply with such notice, requisition or order, the said person shall be punishable with fine not exceeding fifty rupees for every such offence."

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7. The 4th respondent / Executive Officer and Panchayat President, being the Executive Authority is having the power to issue the notice, as such, we are not inclined to interfere with the impugned notice. However, it is the grievance of the petitioner that the impugned notice came to be issued, without affording her an opportunity of personal hearing.

8. Under such circumstances, this Court, without expressing any opinion on the merits of the matter, directs the petitioner to submit her explanation, if any, to the impugned notice dated 12.11.2020, by considering the same as a show cause notice, within a period of two weeks from the date of receipt of a copy of this order. On receipt of such representation, if any, the fourth respondent shall consider and pass appropriate orders, in accordance with law, within a further period of four weeks thereafter. Till such time, the petitioner's possession shall not be disturbed.

9. With the above directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

gk

To

- 1.The District Collector,
Thoothukudi District, Thoothukudi.
- 2.The Commissioner,
Block Development Officer (Va.Oo),
Pudur Union, Thoothukudi District.
- 3.The Tahsildar,
Vilathikulam Taluk,
Thoothukudi District.



4.The Executive Officer and Panchayat President,
Maniyakaranpatti Panchayat,
Vilathikulam,
Thoothukudi District.

+1 CC to SGP (SR-23537[F] dated 01/12/2020)

+1 CC to M/s.P.JEYA SANKAR, Advocate (SR-24696[F] dated
09/12/2020)

W.P. (MD) No.17110 of 2020

08.12.2020

SVN(CO)

NR (16/12/2020) 5P : 7C