



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.12.2020

CORAM:

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

**W.P(MD)No.18508 of 2020
and
W.M.P(MD)No.15474 of 2020**

K.Rajendran

: Petitioner

Vs.

1.The District Collector,
Pudukkottai District,
Pudukkottai.

2.The Tahsildar,
Office of the Thasildar,
Viralimalai,
Pudukkottai.

3.The Block Development Officer (Panchayat),
Office of the Block Development Officer,
Viralimalai Panchayat Union, Viralimalai.
Pudukkottai District.

4.R.Muthusamy

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus, forbearing the 2nd respondent from demolishing the petitioner's latrine and bathroom by implementing the order of the 2nd respondent in his proceedings in Na.K.3569/2017/A1, dated 23.11.2020 pending hearing of the appeal dated 30.11.2020 filed before the 1st respondent.

For Petitioner : Mr.C.Venkatesh Kumar
for M/s Ajmal Associates

For Respondent : Mr.M.Muthugeethaiyan,
Nos.1 to 3 Special Public Prosecutor

For Respondent : Mr.G.Kannan
No.4



ORDER

[Order of the Court was made by **B. PUGALENDHI, J.**]

This writ petition has been filed for a writ of mandamus, forbearing the 2nd respondent, Tahsildar, Viralimalai from demolishing the bathroom and toilet by implementing his proceedings in Na.Ka.3569/2017/A1, dated 23.11.2020, till the disposal of the appeal filed by him before the District Collector concerned.

2.The case of the petitioner is that he is the owner of the land in Survey No.55/2013 in Akkalnayakkanpatti Village, Viralimalai Taluk, Pudhukkottai District to an extent of 0.01.0 ares. He has been in possession of the land for the past 30 years and patta was also issued in his favour. While so, the Block Development Officer (Panchayat), Viralimalai, by his proceedings, dated 01.08.2018, directed the petitioner to demolish the bathroom and toilet, a portion of his house and that proceedings was challenged by the petitioner in W.P(MD)No.19584 of 2018. He also filed another writ petition in W.P(MD)No.19359 of 2018, seeking a direction to the respondents therein, for issuance of patta and both these writ petitions were taken up together and disposed of vide order dated 17.12.2018, granting liberty to the petitioner to submit his explanation. Though the petitioner submitted his explanation, the 3rd respondent once again passed the same order dated 15.02.2019. Yet another notice was also issued and this notice was also challenged before this Court in W.P(MD)No.14550 of 2019 by the petitioner and this Court, by order, dated 01.07.2019 disposed of, the writ petition that the eviction process can be initiated only by the revenue officials.

3. Pursuant to the orders of this Court, the respondents have issued a notice, dated 07.09.2020, for which the petitioner has also submitted his explanation on 30.11.2020 and in the meantime, by proceedings dated 23.11.2020, the second respondent has ordered for removal of encroachment.

4.Heard the respective learned Counsel appearing on either side.

5.This writ petition is filed for a writ of mandamus, forbearing the 2nd respondent from implementing his proceedings, dated 23.11.2020. The notice dated 23.11.2020 was issued by the 2nd respondent / Thasildar, Viralimalai under Section 6 of the Tamil Nadu Land Encroachment Act, 1905.

6.As per the orders of this Court in W.P(MD)No.14550 of 2019, dated 01.07.2019, the 2nd respondent issued notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 that this petitioner has encroached upon a water body, namely, Veerammal Oorani in Survey No.5542 to the extent of 70 Square Feet, at Akkalnayakkanpatti Village and constructed bathroom and toilet.



7.An opportunity was provided to the petitioner to furnish his explanation, if any, within a period of 14 days and the enquiry was fixed on 28.09.2020. Earlier, the petitioner herein submitted a detailed representation, dated 14.08.2018 to the respondents. The Tahsildar has also recorded his statement. Survey was also conducted. After verifying the Revenue records and after considering his representation, the Tahsildar, Viralimalai held that the petitioner has encroached upon 0.00.06 Ares (70 Square Feet) of the land in Government poramboke in Survey No.55/42 and constructed a toilet and bath room. A detailed order has also been passed by the Tahsildar. This order of the Tahsildar has also been verified by the Revenue Divisional Officer and he has also initiated further course of action to remove the encroachment and only thereafter, the impugned notice has been issued by the 2nd respondent under the Tamil Nadu Land Encroachment Act, 1905.

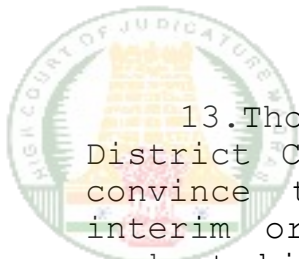
8.A perusal of the records reveal that this writ petitioner is in the habit of filing writ petitions one after the other from the year 2017 and has been delaying the process of removal of encroachment for the past two years.

9.On the directions of this Court, in the earlier writ petitions filed by the petitioner, sufficient opportunity was also provided to the petitioner and a detailed enquiry was conducted, land was also surveyed and the Tahsildar has also identified that the petitioner has encroached upon 70 Square Feet of the Government Poramboke land.

10.Now the present case of the petitioner is that he has filed an appeal against the impugned proceedings, before the District Collector and till disposal of the appeal, he should not be disturbed.

11.By filing an appeal, the petitioner cannot drag on the issue for a further period. This Court has perused the report of the Tahsildar, Viralimalai, dated 19.10.2020 and the Tahsildar has passed a detailed order based on the Revenue records, survey reports, representation and statement of the petitioner herein. The petitioner, thereafter, has preferred this appeal before the District Collector, on 30.11.2020.

12.The Hon'ble Supreme Court and this Court, time and again, have issued several directions to the Government to remove the encroachments in the water bodies. In fact on the directions issued by this Court in W.P(MD)Nos.5301 of 2019, dated 15.03.2019 and W.P (MD)No.14550 of 2019, dated 01.07.2019, the respondents have taken steps to remove the said encroachment. The writ petitioner has also filed various other writ petitions and delayed the process of eviction for the past two years.



13.Though the petitioner has filed an appeal before the District Collector against the impugned proceedings, he could not convince the District Collector, Pudhukkottai for obtaining an interim order. However, it is always open to the petitioner to workout his remedy before the District Collector in the appeal by convincing the District Collector that he is having a good case for interfering with the orders of the Thasildar. Therefore this Court is not inclined to entertain this writ petition.

14.In the result, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (RTI)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

dsk

To

1.The District Collector,
Pudukkottai District,
Pudukkottai.

2.The Tahsildar,
Office of the Thasildar,
Viralimalai,
Pudukkottai.

3.The Block Development Officer (Panchayat),
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Pudukkottai District.

+1 CC to SGP (SR-25583[F] dated 15/12/2020)

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