



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE **N.KIRUBAKARAN**

AND

THE HONOURABLE MRS.JUSTICE **B.PUGALENDHI**

W.P. (MD) Nos.19272 & 19273 of 2020

and

W.M.P. (MD) Nos.16088 & 16089 of 2020

E.Petchiammal : Petitioner in WP(MD)No.19272/2020

C.Suresh : Petitioner in WP(MD)No.19273/2020

Vs.

1.The Additional Chief Secretary,
Rural Development and Panchayat Raj Department,
St.George Fort,
Chennai.

2.The District Collector,
Madurai District,
Madurai.

3.The Revenue Divisional Officer,
Revenue and Disaster Management,
Usilampatti, Madurai District.

4.The Tahsildar,
Revenue and Disaster Management,
Usilampatti Taluk, Usilampatti,
Madurai District.

5.The Block Development Officer (Village Panchayat),
Usilampatti,
Madurai District.

6.The Deputy Block Development Officer (Panchayat),
Headquarters,
Usilampatti,
Madurai District.

7.The Zonal Deputy Block Development Officer,
Zone 3,
Usilampatti,
Madurai District.

8.The President,
Keeripatti Panchayat,
Usilampatti,
Madurai District.

: Respondents in both WPs



9.Dr.K.Eswaran

: 9th Respondent in WP(MD)19272/2020

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order made in Na.Ka.No.1228/2018/Thil dated 16.12.2020 passed by the fifth respondent and quash the same and consequently, forbear the official respondents from dispossessing the petitioners from the land comprised in Natham S.No.85/1 situated at Keeripatti Village, Usilampatti Panchayat Union, Madurai District.

For Petitioners : Mr.D.Sadiq Raja
In both WPs

For Respondents : Mr.M.Muthugeethaiyan
Special Government Pleader
for R.1 to R.8 in both WPs

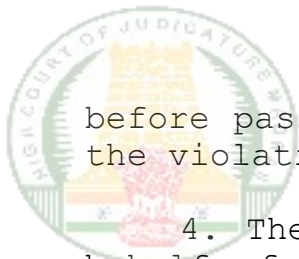
COMMON ORDER

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

These writ petitions are filed by the petitioners as against the order of the fifth respondent dated 16.12.2020 in Na.Ka.No.1228/2018/Thil, in and by which, the petitioners were directed to evict the encroachments in the public pathway on or before 20.12.2020, failing which, the encroachments would be removed by the authorities on 21.12.2020.

2. The case of the petitioners is that the fifth respondent is not the competent authority to issue the impugned order and this Court, by order dated 16.07.2020, in W.P.(MD)No.7628 of 2020, directed the fifth respondent to treat the earlier notice dated 15.06.2020 as a show cause notice under Section 131 of the Tamil Nadu Panchayat Act, 1994. As per Section 131(2) of the Tamil Nadu Panchayat Act, 1994, if removal of the encroachment has not been secured within the period specified in such order, the officers of the revenue department shall initiate proceedings under the Tamil Nadu Land Encroachment Act, 1905. According to the learned Counsel appearing for the petitioners, the fifth respondent, instead of initiating the proceedings under the Tamil Nadu Land Encroachment Act, 1905, straight away issued the impugned order to remove the alleged encroachment.

3. The learned Counsel further submitted that as against the order of the fifth respondent dated 17.11.2020, the petitioners have filed a statutory revision petition under Section 219 of the Tamil Nadu Panchayat Act, 1994, before the first respondent / Government and the same is pending. When the appellate authority has seized off the matter, the lower authority ought not to have issued the impugned order of eviction curtailing the petitioners' statutory remedy available under the Act. It is also submitted that the fifth respondent has not afforded a personal hearing to the petitioners



before passing the impugned order and the impugned order suffers on the violation of principles of natural justice.

4. The learned Special Government Pleader, who takes notice on behalf of the official respondents, submitted that the petitioners are encroachers of a public pathway and they have successfully prevented the authorities from taking action since 2014 by filing petitions, one after another. He further submitted that this Court, as early as in the year 2015, issued a direction to the authorities to take action for removal of encroachment on the petition filed by one Balakrishnan, as per the Government Order in G.O.Ms.No.540, Revenue LD6(2) Department, dated 04.12.2014. Subsequent to that order, the petitioner in W.P.(MD)No.19272/2020 obtained a settlement deed from the encroacher, one Mokkaipillai, W/o.Kaluvathevar on 10.08.2016 and filed a civil suit before the District Munsif Court, Usilampatti, in O.S.No.107 of 2016 for a permanent injunction and also obtained an *ex-parte* order as against one Eswaran and the official respondents.

5. The learned Special Government Pleader further submitted that this Court in the earlier writ petition filed by one of the petitioners herein, namely, Petchiammal, in W.P.(MD)No.7628 of 2020, by order dated 16.07.2020, directed the fifth respondent herein to treat the earlier notice of eviction dated 15.06.2020 as a show cause notice under Section 131 of the Tamil Nadu Panchayat Act, 1994 and granted liberty to the petitioners to submit their explanation, if any, with relevant documents within a period of six weeks. This Court further directed the respondent to pass final orders in accordance with law, after providing an opportunity of personal hearing to the petitioners or the authorised representative, as per Covid-19 standard protocol in the form of video conference. Subsequent to this order dated 16.07.2020, a notice of enquiry was issued to the petitioners on 12.08.2020 and 11.09.2020. The petitioners have also submitted their explanations and apart from the explanations offered, the authorised representatives of the petitioners have also appeared and submitted written submissions, in person, on 14.10.2020. A report was also obtained from the Tahsildar, Usilampatti, and based on the materials, an order has been passed on 17.11.2020, after affording all opportunities to the petitioners and by the said order, the fifth respondent has directed the petitioners to remove the encroachments only in the public pathway in S.No.85/1 and not in the petitioners' properties. The present impugned order is a subsequent communication asking the petitioners to vacate the encroached portion.

6. The learned Special Government Pleader further submitted that as against the *ex-parte* decree obtained by the petitioners in O.S.No.107 of 2016, an application to set aside the *ex-parte* decree was also filed by the Tahsildar, Usilampatti in I.A.No.124 of 2020 and therefore, according to him, there is no reason to interfere with the orders of the fifth respondent.



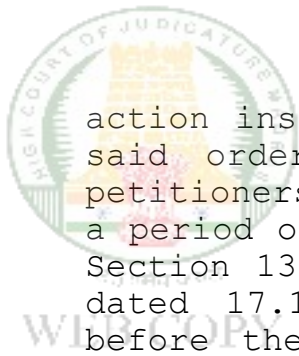
7. This Court paid it's anxious consideration to the rival submissions and also to the materials placed on record.

8. The impugned order has been passed pursuant to the directions of this Court in W.P.(MD)No.7628 of 2020, dated 16.07.2020. The fifth respondent has passed similar such notice on 15.06.2020 in Na.Ka.No.1228/19/ Thil and the same was challenged by the petitioner in W.P.(MD)No.7628 of 2020, wherein, this Court has passed the following directions:

"12.In the light of the above facts and circumstances, this Court directs the fourth respondent to treat the impugned notice as show cause notice under Section 131 of the Tamil Nadu Panchayats Act, 1994 and the petitioner is at liberty to submit her detailed explanation / response with relevant and authenticated documents within a period of six weeks from the date of receipt of a copy of this order and upon the receipt of the same, the fourth respondent is directed to afford an opportunity of personal hearing either to the petitioner or her authorised representative, as per "COVID-19 standard protocol", in the form of video conference also and conclude the proceedings as expeditiously as possible and pass final orders in accordance with law and communicate the decision taken to the petitioner and till such time, the official respondents are directed to defer the eviction proceedings. It is further made clear that the petitioner, till the conclusion of the proceedings by the fourth respondent, shall not create any third party right in respect of the land in question."

9. Pursuant to the orders of this Court, the fifth respondent sent a letter to the petitioners on 12.08.2020 and on 11.09.2020. Based on the same, the petitioners have also submitted their explanation vide letter dated 17.08.2020. The representatives of the petitioners have also appeared before the respondents and submitted a detailed representation on 14.10.2020. The fifth respondent sought for the details about the classification of the land from the Tahsildar, Usilampatti / fourth respondent and the Tahsildar vide his letter in Na.Ka.No.103/2019/Aa4, dated 27.10.2020 stated that as per the 'A' register maintained in the revenue department, S.No.85/1 (Old S.No.67/3) is classified as Poromboke Road and Keeripatti Natham. The Tahsildar, in his report, further stated that a part of Old S.No.67/3 to an extent of 0.04.86 is classified as Keeripatti Natham Poromboke and to an extent of 0.02.16 is recorded in the name of Mokkaipillai, W/o.Kaluvathevar.

10. The fifth respondent, in his order dated 17.11.2020, has mentioned specifically that they are intending to remove the encroachments in the common pathway in S.No.85/1 and not taking any



action insofar as the land of the petitioners is concerned. By the said order dated 17.11.2020, the fifth respondent directed the petitioners to remove the encroachments on the public pathway within a period of fifteen days, failing which, it would be removed as per Section 131 of the Tamil Nadu Panchayat Act. As against this order dated 17.11.2020, the petitioners preferred a revision petition before the first respondent under Section 219 of the Tamil Nadu Panchayat Act, 1994 and filed an objection petition through his Advocate on 26.11.2020, insisting the respondents not to take any coercive action as against the petitioners pending the revision petition. Pursuant to the same, the fifth respondent sought for a clarification from the District Collector / second respondent and thereafter, passed the impugned order dated 16.12.2020, based on the instructions issued on behalf of the District Collector.

11. Sum and substance, the learned Counsel appearing for the petitioners raised the following grounds in support of these petitions:

i) The fifth respondent is not having any jurisdiction to remove the encroachments and the impugned order has been passed without jurisdiction.

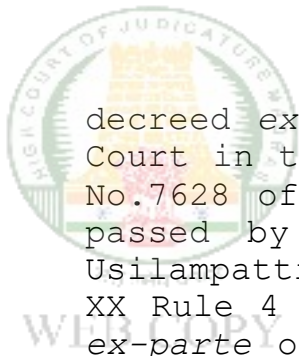
ii) The fifth respondent has not afforded an opportunity of personal hearing to the petitioners before passing the impugned order and the impugned order has been passed in violation of principles of natural justice.

iii) A civil suit has been filed by the petitioners and an order of injunction has been obtained in O.S.No.107 of 2016 as against the official respondents herein.

iv) The petitioners have preferred a revision petition before the Government under Section 219 of the Tamil Nadu Panchayat Act and pending the same, the fifth respondent ought not to have issued the impugned order.

12. With regard to the encroachment in S.No.86/1 of Kalipatti Village, Usilampatti Taluk, Madurai District, one Balakrishnan has filed a writ petition as against the official respondents and one Mokkaipillai, W/o.Kaluvathevar, to remove the encroachments, in W.P. (MD)No.4655 of 2015. The said writ petition was disposed of, by order dated 25.09.2015, by referring to the remedy available under the Government Order in G.O.Ms.No.540, Revenue LD6(2) Department, dated 04.12.2014. The Government has framed a scheme in the said order by constituting certain officials to follow the encroachments and for removal of encroachments. This Court directed the competent authority, namely, the Tahsildar, Usilampatti, to take appropriate steps and to take necessary action as per the said Government Order. Subsequent to that order, Mokkaipillai, W/o.Kaluvathevar, executed a settlement deed in favour of her daughter, Petchiammal / writ petitioner in W.P. (MD)No.19272 of 2020.

13. No doubt, Petchiammal has filed a suit before the District
<https://www.maduraiscours.gov.in/itservice/55> Usilampatti in O.S.No.107 of 2016 and the same was



decreed ex-parte. The very same ground has been raised before this Court in the earlier writ petition filed by Petchiammal in W.P.(MD) No.7628 of 2020 and this Court has held that the ex-parte decree passed by the learned District Munsif cum Judicial Magistrate, Usilampatti, in O.S.No.107 of 2016 is not in consonance with Order XX Rule 4 Sub-rule (2) of the Code of Civil Procedure and that the ex-parte order does not contain the concise statement of the case, points for determination, decision thereon and the reasons for such decision. In fact, this Court has also called for an explanation from the concerned District Munsif. Therefore, the petitioners cannot take advantage of the same.

14. When a similar notice was issued by the Tahsildar, Usilampatti, in Na.Ka.No.5491/2013/B4 dated 08.08.2013, Petchiammal's mother, Mokkaipillai, W/o.Kaluvathevar, preferred a writ petition before this Court in W.P.(MD)No.14454 of 2013, but the said writ petition was dismissed as withdrawn. It appears that one Dr.K.Eswaran, the ninth respondent herein, has filed a writ petition before this Court in W.P.(MD)No.4745 of 2019 for a direction to remove the encroachments in public pathway in S.No.85/1 (Old S.No.67/3) of Keeripatti Village, Usilampatti Taluk. In the said writ petition, the petitioners herein are parties and this Court, by order dated 16.04.2019, has passed the following order:

"7.A perusal of the typedset filed by the 8th respondent would reveal that the second respondent had already issued a notice to the petitioner and respondents 8 and 9 for their appearance on 07.02.2019. It is now stated that the enquiry stands posted on 04.06.2019. Since the second respondent has already issued a notice to the parties for their appearance on 07.02.2019, the respondents 1 to 3 have an obligation to take further action in accordance with law, to see that the proceeding comes to a logical conclusion.

8.Taking note of the facts of the case, the third respondent is directed to conduct a survey in the presence of the petitioner and all other necessary parties and after affording them an opportunity of being heard, they shall pass final orders on merits and in accordance with law. The entire exercise shall be completed within a period of 4 months from the date of receipt of a copy of this order."

15. The ninth respondent has also filed a contempt petition in Cont.P.(MD)No.1734 of 2019 that the orders passed in W.P.(MD)No.4745 of 2019 was not complied with. While so, one of the writ petitioners, Petchiammal, filed a writ petition forbearing the respondents from evicting the petitioner from the property comprised in S.No.85/1 of Keeripatti Village. This Court by interim order dated 04.02.2020 held that the authority shall follow the directions given by this Court in W.P.(MD)No.4745 of 2019, dated 16.04.2019, while removing the encroachments and adjourned the case to some other date. Thereafter, the order dated 15.06.2020 was passed by the



respondents and the said order was challenged in W.P. (MD) No. 7628 of 2020 and this Court by order dated 16.07.2020 disposed of the same with a direction to the respondents to provide an opportunity to the petitioners and accordingly, the impugned order came to be passed.

16. The impugned order would reveal that S.No.85/1 (Old S.No.67/3) is of two parts. One part is a public pathway and the another one is Keeripatti Village Natham. The impugned order says that the respondents are intending to remove the encroachments in the public pathway, without disturbing the Keeripatti Village Natham. The impugned order has been passed by the fifth respondent, after ascertaining the classification of land from the Tahsildar, Usilampatti and the Tahsildar, in his report dated 27.10.2020, has also clarified that the portion of the subject survey number has been classified as public pathway.

17. Sections 130 & 131 of the Tamil Nadu Panchayat Act enables the concerned Block Development Officer to remove the encroachments in a public pathway. The impugned order has been passed after ascertaining the portion as a public pathway. The petitioners cannot take advantage on an ex-parte order passed by the learned District Munsif, Usilampatti and in fact, this ground has already been dealt with in the earlier writ petition itself and was not considered. Opportunities were given to the petitioners and they have submitted their representations. Their authorised representatives have also appeared and submitted representations. Only after considering them, the impugned order came to be passed.

18. Though the petitioners claim that they have filed a revision petition, the said petition has not been numbered and without referring to the number of the revision petition, the petitioners made a request to the respondents to stay the further course of action for removal of encroachment. The fifth respondent, after getting clarifications from the District Collector, passed the impugned order dated 16.12.2020 and this Court finds that there is no error in the impugned order warranting any interference by this Court.

19. In such view of the matter, both the writ petitions lack merits and the same are accordingly, dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS II)

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/ /2021

Sub Assistant Registrar (CS)



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To

1.The Additional Chief Secretary,
Rural Development and Panchayat Raj Department,
St.George Fort,
Chennai.

2.The District Collector,
Madurai District,
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3.The Revenue Divisional Officer,
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and**

**W.M.P. (MD) Nos.16088 & 16089 of 2020
18.12.2020**

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