

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 30.04.2021
CORAM :
THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

W.P.No.11106 of 2021
and
M.P.Nos.11752 & 11755 of 2021

K.Kumaravel ... Petitioner
Vs

- 1.The District Collector,
Salem District.
- 2.The Tashildhar,
Taluk Office, Omalur,
Omalar Taluk,
Salem District.
- 3.The Block Development Officer,
Block Development Office, Omalur,
Salem District.
- 4.The Village Administrative Officer,
Village Administrative Office,
Kottamettupatty Post,
Omalar Taluk, Salem District.
- 5.The President,
Puliyampatty Village,
Omalar Taluk, Salem.

6.P.Krishnan
7.M.Mani ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records from the 5th respondent relating to the impugned notice Ref.nil and Dated.nil issued under the land Encroachment Act, 1905 and quash the same.

For Petitioner : Mr.B.Vijay
for R.Sathishkumar
For Respondents
For R1 to R5 : Mr.S.Kamalesh Kannan
Government Advocate

ORDER

(Order of the Court was passed by N.KIRUBAKARAN, J)

The petitioner has come before this Court challenging the notice issued under Section 7 of the Tamil Nadu Encroachment Act by the 5th respondent/President of Puliampatty Village, by which the petitioner was directed to remove the alleged encroachment comprised in Survey No.64 to the extent of 0.026 sq. meters which has been classified as cart track.

2. Mr.B.Vijay, learned counsel appearing for the petitioner would submit that the 5th respondent has no jurisdiction to invoke the Encroachment Act and therefore, the impugned order is not sustainable. He would also submit that the petitioner and other private respondents have got patta in respect of Survey No.36/10, 36/7, 36/8 and 36/9 to an extent of 0.44.50 hectare. Therefore, according to him, the respondents are trying to remove the possession of the petitioner from his patta land by virtue of the impugned order. He would also point out that the impugned order is connected with Survey No.64 and based on the impugned order only his possession is sought to be disturbed. Therefore, the petitioner has approached this Court.

3. Heard, Mr.B.Vijay learned counsel appearing for the petitioner and Mr.S.Kamalesh Kannan, learned Government Advocate, who takes notice on behalf of the respondents 1 to 5.

4. It is evident from the records that one Mr.P.Shanmugam filed Writ petition in W.P.No.19232 of 2020 seeking Writ of Mandamus, directing the official respondents to remove the encroachment comprised in SF.No.31/1, 61, 62 and 64 situated at Puliampatty village, Omalur Taluk, Salem District and the same was disposed by order dated 17.12.2020 with the direction to the official respondents to make inspection of SF.No.31/1, 61, 62 and 64 and in case of any encroachment, the respondents there in were directed to take action in accordance with law. The relevant portion of the order is usefully extracted as follows:

" 6. This Court taking into consideration the above facts and circumstances and without going into the merits of the claim projected by the petitioner, either in his representation or in this Writ Petition, directs the respondents 3 and 4 to cause joint inspection of the land in S.F.Nos.31/1, 61, 62, 63 and 64 and if the result of the inspection reveals any infraction on the part of the private respondents or any other persons shall take immediate, necessary and appropriate steps, in accordance with law, by also adhering to the principles of natural justice and complete the said exercise within a period of eight weeks from the date of receipt of a copy of

this order / uploading of the order in the website and communicate the decision taken, to the petitioner as well as to the private respondents."

5. Mr.S.Kamalesh Kannan, learned Government Advocate appearing for the respondents 1 to 5 submitted that based on the above said order only the inspection has been conducted and notice has been given to the persons, who have encroached upon the property.

6. Be that as it may, the petitioner's contention is that the petitioner and their family members have got patta for Survey Nos.36/7, 36/8, 36/9 and 36/10 total to an extent of 0.44.50 hectare. Since they have got patta in respect of the above extent, their possession in respect of the patta land shall not be disturbed. However, as per the earlier order dated 17.12.2020, the respondents are permitted to continue with the proceedings as they found that there are encroachment in S.F.Nos.31/1,61,62,63 and 64.

8. With the above direction, the Writ Petition is disposed of. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The District Collector, Salem District.

2.The Tashildhar,
Taluk Office, Omalur,
Omalur Taluk, Salem District.

3.The Block Development Officer,
Block Development Office, Omalur, Salem District.

4.The Village Administrative Officer,
Village Administrative Office,
Kottamettupatty Post,
Omalur Taluk, Salem District.

5.The President,
Puliyampatty Village, Omalur Taluk, Salem.

+lcc to Mr.R.Sathish Kumar, Advocate SR.No. 27014

W.P.No.11106 of 2021

and

M.P.Nos.11752 & 11755 of 2021

Vsn II(CO)

A.SK(07.07.2021)

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