

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND
THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

W.P. No. 13248 of 2021
and
W.M.P. No. 14057 of 2021

B.Mahendran

...Petitioner

Vs

1. The District Collector
Coimbatore District.

2. The Tahsildar
Annur Taluk
Annur, Coimbatore.

3. The Revenue Divisional Officer
Coimbatore.

4. R.Subramanian

5. K.Rukumani

...Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the Second Respondent relating to the order issued in Moo.Mu.A3/1632/2019 dated 21.12.2020 and quash the same and consequently, direct the Respondents to remove the encroachment in Ka.Sa. No. 551/7 at Annur Mettupalayam Natham, New Annur Taluk, Coimbatore District.

For Petitioner: Mr. R.Chandrasekaran

For Respondents: Mr. P.Balathandayutham

State Government Counsel (For R1 to R3)

O R D E R

(Order of the court was made by N.KIRUBAKARAN.J.,)

The matter was heard through "Video Conference".

2. The Petitioner has come before this Court challenging the order dated 21.12.2020 passed by the Second Respondent / Tahsildar, by which the Tahsildar declines to evict the Fifth Respondent, viz., K.Rukumani, from the encroached public pathway comprised in Survey No. 551/7 measuring an extent of 25 square meter by constructing a house. The said K.Rukumani is residing in that encroached premises for the past 20 years and there is an alternate access to the Petitioner's property, where he is putting up construction, which would have been over by this time. It is also noted that there is 8 feet pathway available, other than the aforesaid encroachment made in Survey No.551/7 measuring an extent of 25 square meter and the same can be utilized as pathway to access to the Petitioner's property by the Petitioner.

3. Heard Mr. R.Chandrasekaran, Learned Counsel for the Petitioner, Mr. P.Balathandayutham, Learned State Government Counsel, who takes notice for the First to Third Respondents, and perused the materials placed on record, apart from the pleadings of the parties.

4. The Petitioner contends that he is the owner of the property constructed on the land comprised in Survey No. 551/13 having purchased vide sale deed dated 28.12.2012. He also obtained Patta No. 11339 of 2015 for the said property from the Third Respondent/Revenue Divisional Officer, Coimbatore. When things stand so, the Private Respondents encroached nearby street, which is passing in front of the Petitioner's house site. According to the Petitioner, the said passage is only ingress and egress to his property. The Private Respondents completely encroached upon the public pathway comprised in Survey No. 551/7 constructing a house. Therefore, the Petitioner gave a police complaint on 10.08.2019 and a detailed representation dated 19.06.2019 was given by the Petitioner to the Second Respondent. Based on the Petitioner's representation to remove the encroachments as per the directions given by this Court in Writ Petition No. 31322 of 2019 dated 7.11.2019, the Second Respondent conducted enquiry on 02.09.2020 and 10.09.2020 and after hearing the parties, the impugned order has been passed by the Second Respondent /Tahsildar and the said order is being challenged before this Court.

5. Mr. R.Chandrasekaran, Learned Counsel for the Petitioner contends that the reason given by the Second Respondent is not sustainable, as the private Respondents are land encroachers and merely because they spent money for constructing the house and living for 20 years on the encroached public pathway that cannot a ground to decline to take action against the Private Respondents.

6. It is evident from the records available and the findings given by the Second Respondent that the Private Respondents are living in that constructed house /encroachment encroaching upon the public pathway for the past 20 years. It is also observed that there is an alternate pathway to reach the Petitioner's property. No doubt, the order is not in favour of the Petitioner, therefore, the Petitioner filed an Appeal before the Third Respondent on 08.01.2021. The Third Respondent /Appellate Authority could give an opportunity to the Petitioner as well as to the Private Respondents before passing an order with regard to the sustainability of the order passed by the Second Respondent on 21.12.2020.

7. In view that, there shall be a direction to the Third Respondent to dispose of the Appeal dated 08.01.2021 within a period of twelve weeks from the date of receipt of a copy of this order, by affording an opportunity of personal hearing to the Petitioner as well as to the Private Respondents.

8. With the above directions, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

Maya
To

1. The District Collector
Coimbatore District.
2. The Tahsildar
Annur Taluk
Annur, Coimbatore.
3. The Revenue Divisional Officer
Coimbatore.

+1 CC to The Government Pleader sr 29748.
+1 CC to Mr. R.Chandrasekaran, Advocate sr 29477.

W.P.No.13248 of 2021

KV(CO)
SP(07/07/2021)