

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.01.2021

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

WP.No.13185 of 2020

M.Mariyappan ... Petitioner

Versus

- 1.The District Collector,
Salem District, Salem.
- 2.The Revenue Divisional Officer,
Mettur Taluk, Salem District.
- 3.The Tahsildar,
Mettur Taluk, Salem District.
- 4.The Superintending Engineer,
Public Works Department,
(Water Resources Organization-WRO)
Vincent, Salem District.
- 5.The Assistant Engineer,
Public Works Department,
(Water Resources Organization-WRO)
Mettur Dam, Salem District.

6.Mrs.Sithayee

7.Mr.Arumugam

8.Mr.Dharmalingam

9.Mr.Periyannan ... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents 1 to 5 to take necessary action to remove all types of encroachments made in S.F.No.107/5B, 107/7B, 20/A, 21/A, 110/1C10, 110/1C2, 110/1C9, 110/1B and 107/20A/21A situated at Kolnayakanpatti Village, Mettur Taluk, Salem District in the light of the G.O.Ms.No.540 Revenue Department

[LD 6(2)] Department dated 04.12.2014 within limited time frame and may pass such other or further orders.

For Petitioner : Mr.A.Esakkiappan
For RR1 to 5 : Mr.R.Vijayakumar
Additional Government Pleader

For R6 : Mr.V.Vijayakumar

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J. through video conferencing]

The petitioner in the affidavit filed in support of this Writ Petition would aver among other things that the landed properties comprised in S.F.Nos.107/5B, 107/7B, 20/A, 21/A, situated at Kolnayakanpatti Village, Mettur Taluk, Salem District, belong to the Public Works Department and the said lands are used as a public road / pathway, and some portion of it is also classified as water body / water way. It is the specific case of the petitioner that the private respondents had encroached upon part of the said lands and started putting up superstructures and he has sent representations dated 28.02.2019 and 22.08.2019, to the official respondents. The 1st respondent, upon receipt of the representations, has directed the 2nd respondent, vide communication dated 13.09.2019 in No.O.Mu.24285/2019/K2, to cause survey and inspection, in accordance with the relevant rules and despite such a direction emanated from the superior official, the rest of the official respondents did not act and therefore, he is constrained to approach this Court by filing this Writ Petition.

2. The matter was entertained on 23.09.2020 and when the case was listed on 05.01.2021, the respective learned counsel appearing for the respondents prayed for further accommodation to file a counter affidavit with supporting documents.

3. Mr.R.Vijayakumar, learned Additional Government Pleader accepts notice on behalf of the official respondents and would submit that as on today, the eviction proceedings are going on, by recourse to due process of law.

4. Per contra, Mr.V.Vijayakumar, learned counsel appearing for the 6th respondent has drawn the attention of this Court to the counter affidavit as well as the typed set of documents and would submit that the 6th respondent is an agriculturalist and had purchased 35 cents of agricultural land with specific

extent, measurement and boundaries in S.F.NO.107/7B of Kolnayakkanpatti Village, through registered Sale Deed bearing Document No.1773 of 2008, dated 27.08.2008, registered on the file of the Sub Registrar, Mettur and ever since purchased the land, he is in possession and enjoyment of the same and also cultivating the land and would further aver that the petitioner who is an adjacent land owner, developed enmity and started giving pinpricks and in this regard, the 5th respondent has also issued a faulty Form-III Notice dated 06.10.2020, under the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, read with rules and aggrieved by the same, a comprehensive Suit in O.S.No.190 of 2020, was also filed by the petitioner, on the file of the Court of District Munsif at Mettur, against Thiruvalargal Ayyannan, Boopathy, Prabu as well as against the respondents 1, 4 and 5, for permanent injunction restraining the defendants 4 to 6, from interfering with the possession and enjoyment of the land, granting mandatory injunction directing the defendants 1 to 3 to measure the property and despite pendency of the Suit, further steps are being taken and therefore, prays for appropriate orders to protect the physical possession of the 6th respondent.

5. The 7th respondent is no more. Though the respondents 2 and 3 have been served and their names appear in the cause list, there is no representation on behalf of them, either in person or through advocate.

6. It is the specific case of the 6th respondent that the Form-III notice dated 06.10.2020, issued by the 5th respondent is per se unsustainable as it is faulty and not in consonance with the relevant statutory provisions. It is to be noted at this juncture that the 6th respondent has also filed the comprehensive Suit in O.S.No.190 of 2020, on the file of the Court of the District Munsif at Mettur and the same is pending, without any interim orders.

7. In the considered opinion of this Court, in the absence of any interim orders, it is open to the official respondents to proceed further, of course by strictly following the due process of law and if the petitioner is aggrieved by any further acts of the official respondents concerned, if he is so advised, he is at liberty to work out his further remedies, in accordance with law, before the competent Forum.

8. In the light of the fact that the eviction proceedings are going on by following the due process of law, no further orders are necessary in this Writ Petition.

9. In the result, the Writ Petition is closed, subject to the above observation. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.The District Collector,
Salem District, Salem.

2.The Revenue Divisional Officer,
Mettur Taluk, Salem District.

3.The Tahsildar,
Mettur Taluk, Salem District.

4.The Superintending Engineer,
Public Works Department,
(Water Resources Organization-WRO)
Vincent, Salem District.

5.The Assistant Engineer,
Public Works Department,
(Water Resources Organization-WRO)
Mettur Dam, Salem District.

6.The District Munsif,
Mettur.

+1cc to Mr.A.Esakiappan, Advocate Sr.4501
+1cc to Mr.V.Vijayakumar, Advocate Sr.4499
+1cc to the Government Pleader Sr.4820

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pvs[col]
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