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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.No.23549 of 2021

Ramakrishnan

....

Petitioner

.. Vs..

1. The District Collector,
O/o. Kallakurichi District Collector,
Kallakurichi District,
Kallakurichi.
2. The Executive Officer,
Thiyagadurgam Town Panchayat,
Thiyagadurgam,
Kallakurichi District.
3. The Chairman,
Tamil Nadu Generation and Distribution Corporation Ltd.,
144 Anna Salai, Chennai 600 002

(R3 suo motu impleaded as per order of this Court
dated 02.11.2021)

....

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 & 2 to remove the encroachment in the pathway which is situated in western side of S.No.75, Thiyagadurgam Town, Kallakurichi Taluk and District based on the representation of the Petitioner dated 16.08.2021.

For Petitioner : Mr.M. Senthilkumar

For Respondents : Mr.K. Tippusultan for R1
Government Counsel.
Mr.T.N. Kowishk for R2
Government Counsel.



O R D E R

(Order of this Court was made by S. VAIDYANATHAN., J)

WEB COPY This Writ Petition has been filed seeking direction to the Respondents 1 & 2 to remove the encroachment in the pathway which is situated in western side of S.No.75, Thiyyagadurgam Town, Kallakurichi Taluk and District based on the representation of the Petitioner dated 16.08.2021 within the stipulated time.

2. Mr.K.Tippusultan, learned Government counsel takes notice for the First Respondent and Mr.T.N.Kowishk, learned Government counsel takes notice for the Second Respondent.

3. By consent, this Writ Petition is taken up and disposed of in the stage of admission itself.

4. The case of the Petitioner is that the Petitioner and his family members were in possession of the property in new Survey No.74/3 to the extent of 0.65 cents and now the new survey Nos.74/3A, 3B and 3C in ward No.4 to the extent of 1126 1/2 square feet Tars shops, by running the workshops in the name and style of Srikrishna and Venkatachalapathy Tractor Works. While so, all of a sudden one Mohammed Ali son of Jalil who belongs to Thiyyagadurgam Town has encroached the road poramboke and also had put up the shop structure to the extent of 30x15 square feet. Due to the act of the said person, the Petitioner and the area peoples were preventing for using the pathway and they did not use the road which is in and out. Despite several requests being made by the petitioner for vacating the encroachment, the said person had not chosen to vacate the said premises and he had threatened the petitioner with dire consequences, due to which the petitioner could not run the business. It is further stated that inspite of several requests made to the Second Respondent, in respect of the alleged encroachment, the said authority did not take any action for removing the encroachment made on the pathway. Hence, on 16.08.2021 the Petitioner made a representation to the respondents, requesting them to remove the alleged encroachment. Since, the same did not evoke any response, the petitioner has come forward with this Writ Petition seeking for the aforesaid relief.

5. Heard both sides. Perused the records.

6. Taking note of the facts and circumstances of the case and also the submissions made, the concerned Respondent is directed to ascertain and take decision on the alleged encroachment, by using the drone technology, after affording opportunity of hearing to the petitioner and other persons concerned, within a period of three months from the date of receipt of a copy of this order. This Court makes it clear that



if any encroachment is found to be made by any of the parties, the electricity connection with respect to the encroacher shall be disconnected in the light of the Judgment of the Division Bench in "P.Selvarajan Vs. The Commissioner of Municipal Administration, Chennai and others" (W.P.No. 21639 of 2017) decided on 13.02.2018, following the order of the Supreme Court dated 05.01.2018, passed in Special Leave to Appeal (C) No. 33863 of 2017, wherein the Apex Court observed as follows:

"3. Learned counsel appearing for the fourth respondent submitted that the fourth respondent has made an application for regularisation and that during the pendency of the proceedings, this Court, by order dated 11.09.2017, directed disconnection of electricity in respect of basement, second and third floors of the fourth respondent's premises, against which, the matter was taken up to the Supreme Court. The Supreme Court, in Petition for Special Leave to Appeal (C).No.26509 of 2017, by order dated 13.10.2017, did not interfere with the said order of this Court dated 11.09.2017, and permitted the fourth respondent herein to move the High Court. During the pendency of this Writ Petition, the fourth respondent herein has filed W.M.P.No.30495 of 2017 seeking direction to the TANGEDCO to restore the electricity connection to the building of the fourth respondent. This Court, by order dated 07.11.2017, rejected the restoration of electricity supply. Thereafter, once again the matter was taken up to the Supreme Court by the fourth respondent, and the Supreme Court, by order dated 05.01.2018 in Petition for Special Leave to Appeal (C) No.33863 of 2017, has dismissed the Special Leave Petition, by observing as follows:

"Heard learned counsel for the petitioner and perused the impugned order dated 07.11.2017 passed in WMP.No.30495/2017 passed by the Madras High Court.

We are not inclined to interfere in the impugned order and accordingly, the Special Leave Petition is dismissed.

However, we direct the authority concerned before whom the application for regularisation under the DTCP Building Regularisation Scheme 2017 is pending to decide the matter in accordance with law within two months.

Pending application stands disposed of."

Thus, in the said order dated 05.01.2018, the Supreme Court directed that the authority concerned before whom the application for regularisation under the DTCP Building Regularisation Scheme, 2017, is pending, to decide the matter in accordance with law within two



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months.

4. In this case, it is seen that there is no proper set-back left by the fourth respondent while constructing the building. There is also no proper ventilation as required under Rule 14(2) of the Tamil Nadu District Municipalities Building Rules, 1972. The fourth respondent has combined both the buildings as single unit without the permission from the Attur Municipality.

5. It is not in dispute that the building has been constructed by the fourth respondent in violation of the plan. The Supreme Court has repeatedly held that the building has got to be constructed without any violation of the plan. In view of the same, we are of the view that the violated portion(s) will have to be demolished, as it is not in accordance with the sanctioned plan."

7. The First Bench of this Court (S.K.Kaul, C.J., and R.Mahadevan, J.) in Contempt Petition No.1769 of 2015 and Contempt Petition No.2166 of 2015 (Suo motu), took up a matter pertaining to demolition of the violated portions of a building and insisted that the unauthorised constructions are decimated. Relevant

portion of the said order reads thus:

"4. We have also perused the report of the Commissioner, who is present in Court. We have impressed upon him the importance of ensuring that there is at least no continuing unauthorised construction by issuing stop work notices immediately when such unauthorised construction is detected rather than waiting for comparison of the plans. We have also emphasised the importance of:

(a) Checking the buildings from the basement, ground floor onwards, so that the set backs are adhered to;

(b) Ensure that the on-going construction complies with the norms;

(c) The delinquent officers are brought to book not by mere censure, stoppage of increment, but by more severe consequences like compulsory retirement and dismissal from service. We say so, as despite, mammoth amount of unauthorised construction, we are informed that not a single person has suffered the punishment of dismissal from service or even compulsory retirement at least for the last five years.



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(d) Not to let any unnecessary interference with his work by the persons, who have nothing to do with his job and that he should be able to do his task without fear or favour, for which necessary Court protection is available.'

8. For carrying out the aforesaid exercise, this Court suo motu impleads 'The Chairman, Tamil Nadu Generation and Distribution Corporation Ltd., 144 Anna Salai, Chennai 600 002' as 3rd Respondent in the Writ Petition.

9. The 3rd Respondent is directed to intimate the concerned jurisdictional authorities of the TANGEDCO, to disconnect the electricity connection of the fourth

respondent, if any encroachment is found to be made.

10. With the above observations and directions, this Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

arr/shk

To

1. The District Collector,
O/o. Kallakurichi District Collector,
Kallakurichi District,
Kallakurichi.

2. The Executive Officer,
Thiyagadurgam Town Panchayat,
Thiyagadurgam,
Kallakurichi District.

3. The Chairman,
Tamil Nadu Generation and Distribution Corporation Ltd.,
144 Anna Salai, Chennai 600 002.

+1 cc to Mr.M. Senthilkumar, Advocate Sr.NO. 57017

W.P.No.23549 of 2021

NRL(CO)

A.SK(21.12.2021)