



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2021

CORAM

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

W.P. No. 22296 of 2017

&

W.M.P. Nos. 23386 & 23387 of 2017

1. S. Rajendran
2. M. Subramani ..Petitioners
Vs.

1. The District Collector,
Namakkal District.
2. The Revenue Divisional Officer,
Namakkal.
3. The Tahsildar,
Rasipuram,
Namakkal District.
4. Kuppayi
5. Rani
6. Rajendran
7. Durairaj
8. Ponnusamy
9. Lakshmi
10. Jayaraman
11. Thirunavukkarasu

(R4 to R11 impleaded as per order
dated 05.09.2017 by MSNJ & NSSJ in
W.M.P. No. 24994/2017 in W.P. No.
22296/2017)



12. The Block Development Officer,
Rasipuram, Namakkal District.

(R12 suo motu impleaded and substituted
in place of BDO, Rasipuram, Namakkal
District vide order dated 23.04.2021
made in W.P. No. 22296/2017)

..Respondents

Prayer: Petition under Article 226 of the Constitution of India
praying for issue of a Writ of Mandamus directing the
respondents to remove all encroachments in S.No. 183/1,
Theppakulakkadu, Mullukuruchi Village, Rasipuram Taluk, Namakkal
District by implementing the orders in Na.Ka.1124/2017/Aa2 dated
06.04.2017 passed by the 2nd respondent.

For Petitioners:: Mr.W.M. Abdul Majeed for
Ms.G. Sumitra

For Respondents:: Mr.P. Balathandayutham
State Government Counsel for
R1 to R3
Mr.N. Manokaran for
R4 to R9
Mr.V. Janarthanan
for R10 & R11
Mr.M. Elumalai,
Addl. Govt. Pleader for R12

O R D E R

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

The matter was heard through videoconferencing.

2. The writ petition is filed seeking issue of a Writ of
Mandamus directing the respondents to remove all the
encroachments in S.No. 183/1, Theppakulakkadu, Mullukuruchi
Village, Rasipuram Taluk, Namakkal District as per the
proceedings issued by the 2nd respondent dated 06.04.2017 by
which the 2nd respondent directed the Lower Authorities to remove
the encroachments on the cart track/passage to an extent of 49 ¼
cents.

3. The petitioners would contend that S.No. 183/1
measuring about 0.26.5 hectares in Theppakulakadu, Mullukurichi
Village, Rasipuram Taluk, Namakkal District is a cart track used
for ingress and egress of the villagers whereas the private
respondents have encroached upon the said pathway and made
construction thereby preventing the movement of vehicles and
people on the pathway. The representations made by the
petitioners, in this regard, to the 3rd respondent were rejected



by order dated 19.01.2017, aggrieved by which, the petitioners gave representations to the 1st respondent and other authorities. The 1st respondent had forwarded the same to the 2nd respondent, who called for an enquiry on 20.03.2017. A spot inspection and enquiry was conducted by the 2nd respondent along with Divisional Committee members. Based on the report of the Divisional Inspector (Survey), by order dated 06.04.2017, the 2nd respondent held that there were encroachments on the cart track and Government land and directed the 3rd respondent to remove the encroachments. To enforce the said order only, the present writ petition has been filed.

4. Since it is submitted by Mr.M. Elumalai, learned Additional Government Pleader that Block Development Officer, Namagiripettai, Namakkal District is the appropriate authority and not the Block Development Officer, Rasipuram, Namakkal District, who has been impleaded as the 12th respondent by order dated 23.04.2021, the Block Development Officer, Namagiripettai, Namakkal District is suo motu impleaded by this Court in place of Block Development Officer, Rasipuram, Namakkal District. The Block Development Officer, Rasipuram, Namakkal District shall be deleted from the array of respondents and instead, the Block Development Officer, Namagiripettai, Namakkal District shall be substituted.

5. Heard Mr.W.M. Abdul Majeed, learned counsel for the petitioners; Mr.P. Balathandayutham, learned State Government Counsel for respondents 1 to 3; Mr.N. Manokaran, learned counsel for respondents 4 to 9; Mr.V. Janarthanan, learned counsel for respondents 10 and 11 and Mr.M. Elumalai, learned Additional Government Pleader appearing for the 12th respondent.

6. According to the petitioners, S.No. 183/1 is a cart track. However, Mr. N. Manokaran, learned counsel appearing for respondents 4 to 9 would submit that private respondents as well as the petitioners are residing there for more than 100 years. They have put up construction and they have been residing there for decades together. In this regard, he referred to the photographs filed in the typed set of papers. The learned counsel would submit that the petitioners themselves are encroachers and the writ petition has been filed only to have direct access to their property. He would further submit that if the private respondents are evicted from that place, definitely, it will cause irreparable loss to them as they have been living there for more than three generations.

7. A perusal of the order dated 19.01.2017 passed by the Tahsildar, Rasipuram, Namakkal District would indicate that on the basis of the inspection report dated 10.01.2017 submitted by the Revenue Inspector, he had come to the conclusion that the



private respondents have been occupying the property for 40 years and they have put up construction and living there and that the said construction does not affect the usage of pathway. However, the said order has been reversed by the 2nd respondent without giving any opportunity to the private respondents.

8. Against the said order of the 2nd respondent, some of the private respondents had filed revision petitions before the District Revenue Officer, Namakkal, who by order dated 24.11.2020, while disposing of the revision petitions, directed the Tahsildar, Rasipuram to proceed under Section 7 of the Land Encroachment Act, 1905, to remove the encroachments on the cart track in S.No. 183/1 on or before 31.12.2017, after issuing notice to parties concerned and in case of any objection, directed the revision petitioners before him to approach the District Level Steering Committee on Encroachment headed by the District Collector/1st respondent. Immediately, they had submitted a petition to the District Level Steering Committee on Encroachment headed by the District Collector on 26.12.2017. The said petition is yet to be disposed of. In the meanwhile, respondents 5 to 8 along with two others had also filed a suit in O.S. No. 45/2017 before the District Munsif Court, Rasipuram seeking permanent injunction against respondents 1 to 3 herein. Though permanent injunction was granted ex parte, subsequently, the matter is being contested by filing a written statement. While so, the petitioners have come before this Court.

9. Considering the facts and circumstances of the case, this Court is of the view that these are all matters that have to be gone into by the authorities by conducting inspection. The authority, who made the inspection, i.e, Revenue Inspector, Mullukurichi Circle, had found that the private respondents have been residing there for more than 40 years. However, the photographs filed before this Court reveal that the superstructures are very old and standing for years together and a pucca concrete road has been laid. According to the Tahsildar, even the petitioners are encroachers. If an order of eviction is passed, definitely, it will affect the private respondents who are residing there for years together. Therefore, the District Collector, Namakkal District/1st respondent herein is directed to issue notice to all the parties and give an opportunity to all concerned, hear them and pass appropriate orders within 16 weeks from the date of receipt of a copy of this order. Till such time, no coercive steps shall be taken by the authorities.

10. In case, the District Collector, Namakkal, finds that there are encroachments and the encroachments have to be removed, the Revenue Divisional Officer has to find out whether the private respondents are landless poor people, who do not have any other property for relocating their residence. In this



context, it would be apt to extract paragraph Nos. 3 and 13 of the counter affidavit filed by some of the private respondents hereunder wherein they have stated that they are landless poor:

"3. I submit that the total extent of S.No. 183/1 is 65 cents and the said extent was occupied by the writ petitioners and the respondents 4 to 11 nearly 100 years ago. The respondents 4 to 8 and their ancestors are landless and houseless poor persons, and they have taken shelter in and over the subject matter S.No. 183/1 long ago. In due course, the respondents 4 to 8 and their ancestors converted the thatched shed into the titled houses buildings and obtained electricity service connections in their respective names. I submit that the Mullukurichi Village Panchayat provided water connections to our houses, and we have voluminous documents such as Ration Card, Voters' Identity Card, Aadhar Card, EB tariff receipts, house tax receipts, etc to prove our actual, exclusive, continuous, uninterrupted possession and enjoyment of the subject matter S.No. 183/1.

...

13. I submit that the respondents 4 to 8 and other private respondents are in possession and enjoyment of the subject matter S.No. 183/1 for more than a century. Almost 3 generations have passed so far. I submit that the subject matter S.No. 183/1 is not a road for the general public to reach some other destinations, whereas only few families including the respondents 4 to 8 are living with their families. We are landless and helpless daily coolie workers. We have been unnecessarily targeted by the petitioners who are economically well placed in the society. I submit that the entire episode is to prevent us from getting house patta for our respective houses, and that the writ petition has been filed for an oblique motive and for extraneous reasons."

In case, the private respondents are found to be landless poor, the District Collector may issue free patta to these people before removal of encroachments. With the above direction, the writ petition is disposed of. No costs. Connected W.M.Ps are closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

nv



To

1. The District Collector,
Namakkal District.
2. The Revenue Divisional Officer,
Namakkal.
3. The Tahsildar,
Rasipuram,
Namakkal District.
4. The Block Development Officer,
Rasipuram, Namakkal District.

+1cc to Mr.G.Sumitra, Advocate, S.R.No. 28634
+1cc to Mr.N.Manokaran, Advocate, S.R.No.28616

W.P. No.22296 of 2017

SR II (CO)
GN(18/08/2021)