



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.07.2021

CORAM:

The Hon'ble Mr.JUSTICE T.S.SIVAGNANAM

AND

The Hon'ble Mrs.JUSTICE S.ANANTHI

W.P. (MD) .No.10119 of 2020

Selvam

...Petitioner

Vs.

1. The District Collector,  
Kanyakumari District,  
Nagercoil.
2. The Revenue Divisional Officer,  
Agastheeswaram Division,  
Nagercoil,  
Kanyakumari District.
3. The Tahsildhar,  
Agastheeswaram Taluk,  
Collector Office Building,  
Nagercoil,  
Kanyakumari District.

4.A.Thangaraj

....Respondents

**PRAYER:** Writ Petition is filed under Article 226 of the Constitution of India, directing the respondents 1 to 3 to remove the encroachment made in the Nilaviyal pathai situated in new survey No.548/23 at Vempanur East Village, Agastheeswaram Taluk, Kanyakumari District in the light of the proceedings of the first respondent in Omu./Em2/5848/2019, dated 26.02.2019 within a time stipulated by this Court.

For Petitioner : Mr.S.R.Anbarsu

For Respondents : Mr.A.K.Manickam,  
Standing Counsel for Government  
For R1 to R3.  
Mr.D.Nallathambi, For R4.



**O R D E R**

[Order of the Court was delivered by **T.S.SIVAGNANAM, J.**]

This Writ Petition has been filed as a Public Interest Litigation praying for issuance of the Writ of Mandamus, to direct the respondents 1 to 3 to remove the alleged encroachment made by the fourth respondent in New Survey No.548/23 at Vempanur East Village, Agastheeswaram Taluk, Kanyakumari District.

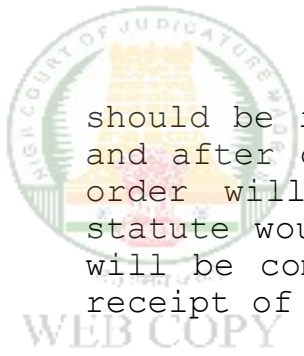
2.The petitioner is before this Court because in spite of direction issued by the District Collector forwarding the petitioner's representation to the third respondent, Tahsildar, Agastheeswaram by a memo dated 26.02.2019, no action has been taken till date.

3.The Tahsildar has filed counter affidavit stating that the land is under encroachment of Thiru.Thangaraj, who is the fourth respondent and action has been taken to remove the encroachment by issuing notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 vide a notice dated 24.08.2020 and further action will be taken as per rules. It is not clear, as to why, the Tahshildar did not take action pursuant to the notice issued by the second respondent.

4.The learned counsel for the fourth respondent submitted that the fourth respondent filed a suit in O.S.No.315 of 2002 on the file of the learned Principal District Munsif Court, Nagercoil, for a decree of injunction and the defendants are none other than the former President, Secretary and Treasurer of an unregistered organisation to which the petitioner claims no affiliation and the suit was decreed by judgement and decree dated 14.05.2002. The defendants filed an appeal before the First Additional Sub Court, Nagercoil in A.S.No.112 of 2006 which has been dismissed by judgement dated 26.06.2018 and aggrieved by the said judgement, second appeal in S.A.(MD)No.1169 of 2005 is pending before this Court. Therefore, it is submitted that in respect of the same property, civil litigation is pending and there is a decree in favour of the fourth respondent.

5. In reply, the learned counsel for the petitioner would contend that in the judgement dated 14.05.2002 in O.S.No.315 of 2002, it has been categorically held that the said judgement will not stand in the way of the officials taking action under law, if there is an encroachment in a Government property.

6. In the light of the above, we are of the view that since already the third respondent is directed to proceed further pursuant to the notice issued under Section 7 of the Act and provide full and effective opportunity to the fourth respondent to place all papers in support of his contention and conduct an enquiry in which notice



should be issued to the petitioner as well as the fourth respondent and after considering all the documents and submissions, a speaking order will be passed on merits and in accordance with law, as statute would mandate under Section 6 of the Act. The said exercise will be completed within a period of three months from the date of receipt of a copy of this order.

7.The writ petition stands disposed of accordingly. No costs.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

kmm

*Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.*

To

1. The District Collector,  
Kanyakumari District,  
Nagercoil.
2. The Revenue Divisional Officer,  
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Kanyakumari District.
3. The Tahsildhar,  
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Nagercoil, Kanyakumari District.

+1 CC to M/s.D.NALLATHAMBI, Advocate (SR-22382[F] dated 13/07/2021)  
+1 CC to M/s.SPL GP (SR-22283[F] dated 13/07/2021)

**W.P. (MD) .No.10119 of 2020**  
**12.07.2021**

**RC (19.07.2021)3P-6C**