



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

Rev.Aplw(MD).No.124 of 2019

in

W.P(MD).No.6311 of 2018

1.Chellammal

2.Pappathy

... Review Applicants/Respondents 4 & 5

Vs.

1.S.Chandrasekaran

... 1st Respondent/Petitioner

2.The District Collector,
Trichy District,
Trichy.

3.The Tahsildar,
Musiri Taluk,
Musiri, Trichy District.

4.The Special Officer/Block Development Officer,
Anjalam Village Panchayat,
Musiri Taluk,
Trichy. ... Respondents 2 to 4/Respondents 1 to 3

PRAYER: Petition is filed under Order 47 Rule 1 & 2, Section 114 of Civil Procedure Code r/w Article 226 of the Constitution of India, to set aside the order passed in W.P(MD).No.6311 of 2018 dated 09.02.2018.

Prayer in WP(MD). 6311 of 2018 :

Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the 1 to 3 Respondents to remove the encroachment made by the Respondents No.4 and 5 in S.F.No.68/1 for an extent of 0.06.0 of Anjalam Village, Musiri Taluk, Trichy District which is classified as Salai namely the Government road and take necessary action against the 4 and 5 Respondents for their continuous encroachment on the basis of petitioner's representation 22.12.2017.

For Petitioners

For R-1

For R2 to R4

: Mr.H.Arumugam

: Mr.T.Vadivelan

: Mr.A.K.Baskarapandian

Special Government Pleader



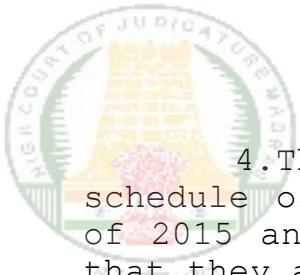
ORDER

[Order of this Court was made by **T.S.SIVAGNANAM, J.**]

Heard Mr.H.Arumugam, learned counsel for petitioners, Mr.T.Vadivelan, learned counsel for first respondent and Mr.A.K.Baskarapandian, learned Special Government Pleader for respondents 2 to 4.

2.This review application is to review the order and direction in W.P(MD).No.6311 of 2018 dated 09.02.2018. The first respondent had filed the writ petition to direct the respondents 2 to 4 to remove the encroachment made by the review applicants in Survey No.68/1 to an extent of 0.06.0 in Anjalam Village, Musiri Taluk, Trichy District on the ground that the land is classified as 'சாலை புறம்போக்கு'. It is true that the writ petition was disposed of without notice to the review applicants, who were impleaded as respondents 4 and 5. This Court proceeded to do so, taking note of the facts placed before this Court and also having been satisfied with the classification of the land in Survey No.68/1 is 'rhiy Gwk;Nghf;F'. Further, the Court noted that earlier, attempts have been made to clear the encroachment, but once again the review applicants have planted crops and have encroached the 'சாலை புறம்போக்கு'.

3.Mr.H.Arumugam, learned counsel appearing for the review applicants would submit that under the guise of removal of encroachment, the attempt has been made to interfere with the applicants' patta lands in Survey No.68/2 and full facts were not placed by the first respondent/writ petitioner before this Court nor by the Block Development Officer. It is further submitted that the first applicant has filed a suit in O.S.No.281 of 2015 on the file of the Principal District Munsif Court, Musiri for declaration his right over the said property and for consequential permanent injunction to restrain the official respondents and the first respondent/writ petitioner from interfering with the possession of the property. It is submitted that Interlocutory Applications in I.A.Nos.984 and 985 of 2015 have been filed to grant an order of temporary injunction and to appoint an Advocate Commissioner to note down the physical features of the property respectively and the official defendants in the suit have filed a written statement and also gave an undertaking that no action will be taken, till the disposal of the Interlocutory Applications and the same was recorded by the Court below on 01.09.2016. Therefore, it is submitted that unless a proper survey is conducted in respect of lands owned by the applicants in Survey No.68/2, the order passed in the writ petition should not be enforced, and therefore, the order is required to be reviewed.



4.The learned Special Government Pleader referred to the schedule of property mentioned in I.A.No.984 of 2015 in O.S.No.281 of 2015 and submitted that the applicants themselves have admitted that they are in possession of Government land.

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5.In our considered view, as we have disposed of the writ petition without notice to the review applicants, there should be no interference with the applicants' rights to enjoy the property comprised in Survey No.68/2 which is a patta land as claimed by the review applicants, because, even according to the official respondents, the land in Survey No.68/1 alone is classified as 'சாலை புறம்போக்கு'.

6.Mr.T.Vadivelan, learned counsel appearing for the first respondent/writ petitioner submitted that the encroachments have been removed and crops have been harvested by review applicants.

7.We make it clear that under the guise of removal of encroachments, there should not be any interference with the land owned by the applicants in Survey No.68/2. Since the applicants have filed a suit for declaration, it is well open to them to contest the suit by leading oral and documentary evidence and observations made in this order will not in any manner prejudice the applicants in the civil proceedings. Likewise, the applicants cannot rely upon the observations made in this order to strengthen their case before the civil Court and they have to establish their right independently in the civil proceedings.

8.With the above observations, the Review Application is disposed of. No costs.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar(CS)

rmk

To

1.The District Collector,
Trichy District,
Trichy.

2.The Tahsildar,
Musiri Taluk,
Musiri, Trichy District.



3.The Special Officer/Block Development Officer,
Anjalam Village Panchayat,
Musiri Taluk,
Trichy.

+1CC TO MR.H.ARUMUGAM, Advocate Sr. No.96527
+1CC TO MR.T.VADIVELAN, Advocate Sr. No.96385
+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 96336

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GKG (CO)
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