



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED 19.02.2021

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM
W.P. (MD) Nos.14941 and 14950 of 2020
and WMP (MD) Nos.12569 & 12570 of 2020 and
WMP. (MD) Nos.12581 & 12582 of 2020

S.Chelladurai .. Petitioner in W.P(MD).No.14941 of 2020

Babu .. Petitioner in W.P(MD).No.14950 of 2020

Versus

1.The District Collector,
Collectorate, Thoothukudi District.

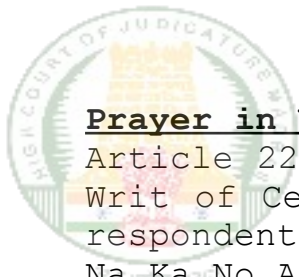
2.The Revenue Divisional Officer,
O/o. Revenue Divisional Office,
Kovilpatti Division,
Thoothukudi District.

3.The Thasildar,
Kayathar Taluk Office,
Thoothukudi District.

4.The President,
Kalappaipatti Panchayath,
Kayathar Taluk,
Thoothukudi District.

.. Respondents
in both W.Ps.

Prayer in W.P(MD).No.14941 of 2020:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the 4th respondent under his proceedings bearing number Na.Ka.No.Aa4/2403/2020-5 dated 13.08.2020 for S.No.453/17 and Na.Ka.No.Aa4/2403/2020-6 dated 13.08.2020 for S.No.452 and consequential notices dated 02.09.2020 and 10.09.2020 bearing proceedings No.Panchayath/01/2020-5 & 01/2020/6 demanded the petitioner to vacate from his property measuring 00216 Sq.mt comprised in Natham S.No.453/17 and measuring 00066 Sq.mt in S.No.452 in Kalappaipatti Village, Kayathar Taluk, Thoothukudi District, as illegal, ultra vires, without jurisdiction, unsustainable and consequently forbearing the respondents from evicting him from the said property.



Prayer in W.P(MD).No.14950 of 2020:-

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the 4th respondent under his proceedings bearing number Na.Ka.No.Aa4/2403/2020-3 dated 13.08.2020 and consequential notices dated 02.09.2020 and 10.09.2020 bearing proceedings No.Panchayath/01/2020-3 demanded the petitioner to vacate from his property measuring 12 cents comprised in Natham S.No.453/17 in Kalappaipatti Village, Kayathar Taluk, Thoothukudi District, as illegal, ultra vires, without jurisdiction, unsustainable and consequently forbearing the respondents from evicting him from the said property.

For Petitioner : Mr.M.Ponniah
in both W.Ps.

For Respondents : Mr.K.P.Krishnadoss
in both W.Ps. Spl. Govt. Pleader for R1 to R3

Mrs.Padma for R4

Mr.I. Pinaygash
for Intervenor

COMMON ORDER

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

It is the case of the petitioners that the lands comprised in Old S.No.134/8, Kalappaipatti Panchayath, Kayathur Taluk, Thoothukudi District admeasuring an extent of 4.86.5 Hectares has been classified as "Natham", which according to the petitioners also "Grama Natham (Village site)" and the corresponding new survey numbers are S.F.Nos.457/40, 461/2, 453/17, 452 and 456/6. It is the further case of the petitioners that their predecessors were in enjoyment of the said lands and by way of succession, the petitioners are in enjoyment of 00216 Sq.mtrs and 12 cents of land respectively and they are using it for dwelling purpose.

2. Mr.M.Ponniah, learned counsel appearing for the petitioners would submit that impugned notices have been issued by the fourth respondent in compliance of the order dated 03.09.2020 made in W.P (MD)No.10784 of 2020, for which, the petitioner in W.P.(MD) No.14950 of 2020 filed a review application along with a petition for condonation of delay, in which notices were ordered by this Court today. The primordial submission made by the learned counsel appearing for the petitioners is that the fourth respondent lacks necessary authority to issue the impugned notices and that apart since the lands in question is classified as



"Grama Natham (Village Site)", the provisions of the Tamil Nadu Land Encroachment Act, 1905 cannot be invoked and prays for interference.

3. *Per contra*, Mrs.Padma, learned counsel appearing for the fourth respondent / Kalappaipatti Panchayat would submit that admittedly the petitioners are encroachers and the said lands are required for important public purpose and since due process of law has been invoked by the fourth respondent in the light of Section 83 of the Tamil Nadu Panchayats Act, 1994, he is having jurisdiction and competency to issue notices and prays for dismissal of these writ petitions.

4. This Court has considered the rival submissions and also perused the materials placed before it. This Court also heard the submissions of Mr.K.P.Krishnadoss, learned Special Government Pleader appearing for the respondents 1 to 3, Mr.I.Pinaygash, learned counsel appearing for the Intervenor.

5. The petitioner in W.P(MD).No.14950 of 2020, subsequent to the issuance of the impugned notice by the fourth respondent, has approached the Civil Court by filing a Suit in O.S.No.120/2020 on the file of the Court of Principal District Munsif, Kolvilpatti against the respondents 1 and 4 and Block Development Officer, Ottapidaram, Thoothukudi District, praying for Permanent Injunction restraining the defendants from interfering with the petitioner's peaceful possession and enjoyment of the lands in O.S.No.134/8, New Survey No.453/17 admeasuring to an extent of 15 cents and he failed to get any interim orders.

6. In the light of Section 83 of the Tamil Nadu Panchayats Act, 1994 and in the absence of any specific stand as to the non-following of the said provision, this Court is of the considered view that the fourth respondent is having competence to remove the encroachment in the light of Tamil Nadu Panchayats (Restriction and Control to Regulate the use of Porambores in Rrotwari Tracts) Rules, 2000.

7. A perusal of the impugned notices, which are the subject matter of challenge in these writ petitions *prima facie* disclose that as per the survey and measurement, the land has been classified as "Natham" and the notice proceeded on the footing that if the petitioners failed to vacate from the lands in question, action would be taken under the Tamil Nadu Land Encroachment Act, 1905 and Tamil Nadu Panchayats Act, 1994 and Rules framed thereunder.

8. Section 131 of the Tamil Nadu Panchayats Act speaks about prohibition against obstructions in or over public road or any



property vested in or belonging to a Village Panchayat or Panchayat Union Council and the provision for eviction is available under Sub-Section (2) to Section 131 of the said Act.

9. It is the submission of the learned counsel appearing for the official respondents that there may be a possibility of inadvertent wrong entry or fraudulent entry as "Village Site" and however, this Court is not inclined to go into the same for the present and in the light of the contents of the impugned notices, it may be open to the respondents 1 to 3 to cause verification as to the said aspect, of course in accordance with law.

10. This Court, taking into consideration the above facts and circumstances and without going into the merits of the case projected by the petitioners either in the representation dated 25.09.2020 or in these writ petitions, directs the fourth respondent to permit the petitioners to submit a detailed response / representation by enclosing all relevant authenticated documents to the respondents 3 and 4, within a period of three weeks from the date of receipt of a copy of this order / uploading of the order in the website and upon receipt of the same, the respondents 3 and 4 shall consider and dispose of the same within a further period of four weeks thereafter and communicate the decision taken, to the petitioners herein as well as to the petitioner in W.P.(MD)No.10784 of 2020 and till such time, shall defer further decision in terms of the impugned notices. It is also made clear that the petitioners, till the disposal of the representation / response by the respondents 3 and 4, shall not create any third party rights in respect of the lands and superstructure in question.

11. These writ petitions are disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD I)

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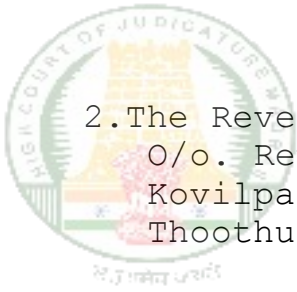
Sub Assistant Registrar (CS)

JVM

To

1.The District Collector,
Collectorate, Thoothukudi District.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Revenue Divisional Officer,
O/o. Revenue Divisional Office,
Kovilpatti Division,
Thoothukudi District.

3.The Thasildar,
Kayathar Taluk Office,
Thoothukudi District.

4.The President,
Kalappaipatti Panchayath,
Kayathar Taluk,
Thoothukudi District.

+1 CC to SPL GP (SR-6671,6670[F] dated 23/02/2021)

+2 CC to MR.M.PONNIAH, Advocate (SR-6784,6785[F] dated 23/02/2021)

W.P. (MD) Nos.14941 and 14950 of 2020
19.02.2021

KM (09.03.2021) 5P 8C