



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

AND

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

W.P(MD)No.14575 of 2021

and

W.M.P(MD)Nos.11506, 11507 and 14248 of 2021

AR.Chandrasekar

... Petitioner

Vs.

1.The Special Commissioner &
Commissioner for Land Administration,
Chepauk, Chennai-600 005.

2.The District Collector,
Sivagangai District.

3.The Tahsildar,
Thiruppathur Taluk,
Sivagangai District.

... Respondents

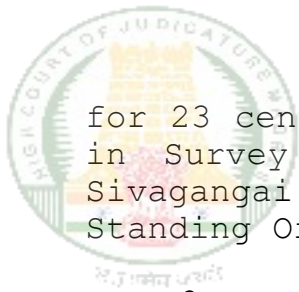
PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the first respondent in RC.No.T2/23748/2013, dated 28.07.2021 confirming the order of the impugned order of the second respondent in Roc.E4/22003/2012, dated 25.08.2013 and impugned order of the third respondent, dated 15.10.2012 served on the petitioner in Na.Ka.A5/17456/2008, dated 19.10.2012, quash the same and consequently direct the respondents herein to execute assignment for 23 cents of land in Survey No.49 in lieu of 40 cents patta land in survey No.174/2 in K.Vairavanpatti Group, Thirupathur Taluk, Sivagangai District relinquished for panchayat land as per Board Standing Order 26-A, within a reasonable time as may be fixed by this Court.

For Petitioner	: Mr.Srinivasa Raghavan
For Respondents	: Mr.B.Saravanan Government Advocate

ORDER

(Order of the Court was made by **M.DURAI SWAMY, J.**)

The petitioner has filed the above Writ Petition to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the first respondent, dated 28.07.2021, confirming the order of the second respondent, dated 25.08.2013 and the order of the third respondent, dated 15.10.2012 and quash the same and consequently direct the respondents to execute assignment

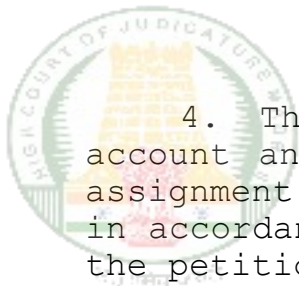


for 23 cents of land in Survey No.49 in lieu of 40 cents patta land in Survey No.174/2 in K.Vairavanpatti Group, Thirupathur Taluk, Sivagangai District, relinquished for panchayat land as per Board Standing Order 26-A.

2. It is the case of the petitioner that he purchased patta lands in Survey Nos.171, 172 and 174/1 in K.Vairavanpatti Village Panchayat, Thiruppathur Taluk, Sivagangai District from one Azhagu Meenal, W/o Subramanian Pillai, on 17.09.2003 under a registered sale deed. The vendor of the petitioner purchased the entire land in Survey No.174 by a registered sale deed, dated 24.10.1963 and acquired Survey Nos.171 and 172 through registered Will, dated 19.04.1994 executed by her husband. After the purchase, the petitioner obtained patta in his name and put up construction including a dwelling house and a temple after getting approval from the local authorities. According to the petitioner, the property was assessed to property tax and also he obtained electricity connection from the TANGEDCO. While so, on a complaint made by his neighbour alleging that he encroached the water body in Maravanendal Kanmoi in Survey No.49, the third respondent issued a notice in the year 2008 and after field inspection and verification, the authorities found that no encroachment was made by the petitioner. The third respondent also submitted a report to that effect to the second respondent. Again in the year 2012, at the instance of the petitioner's neighbour, the same issue was raked up and proceedings were initiated under the Tamil Nadu Land Encroachment Act, for the removal of encroachment without conducting any field inspection or identifying the alleged encroachment.

3. It is also the case of the petitioner that when the panchayat road was to be developed during the year 1968-1969, there was exchange of patta land by the petitioner's vendor in Survey No.174 by offering 40 cents of her patta land for the formation of the panchayat road under Board Standing Order 26-A in lieu of 23 cents in Survey No.49. The procedure is by relinquishment of right in patta land under BSO 26-A and according to the petitioner, the Revenue Authorities should have issued assignment for 23 cents in Survey No.49. After the exchange of 40 cents in Survey No.174, the said Survey Number was divided as Survey No.174/2, which is a panchayat road. According to the petitioner, the entire extent of Survey No.49 is not a Kanmoi in entirety, but it is of mixed character of Kanmoi on the east of Survey No.49 and vast extent of vacant land on its west. Across the western portion, there is a pucca metal thar road of Village panchayat laid in 1972. On the east of panchayat road, there are row of electrical polls and on the west of panchayat road, electrical transformer is erected. The panchayat road, transformer and electrical poles situate on the west of the Kanmoi in Survey No.49, whereas the subject land measuring an extent of 23 cents in Survey No.49 situate on the further west of the said panchayat road, transformer and electrical poles. Thus, according to

<https://hdservices.mca.gov.in/hoservices> Survey No.49 is not a Kanmoi in entirety.



4. The petitioner also contended that without taking into account any of the above details, the authorities failed to issue assignment deed for the land in respect of 23 cents in Survey No.49, in accordance with Board Standing Order 26-A and erroneously treated the petitioner as an encroacher of the water body.

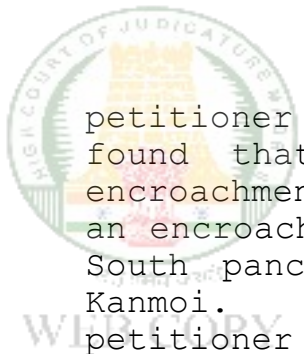
5. The petitioner has also filed a civil suit in O.S.No.32 of 2012, on the file of the Additional District Court, Sivagangai against the respondents 2 and 3 for declaration and injunction and the said suit is pending. According to the petitioner, the orders passed by the respondents are erroneous for the reason that they have not taken into consideration the case of the petitioner in a proper manner.

6. There cannot be any second opinion with regard to the removal of encroachment made in a water body. But, before coming to the said conclusion, the authorities should establish that the land in question lies in a water body.

7. In the pending civil suit in O.S.No.32 of 2012, on the file of the Additional District Court, Sivagangai, the petitioner took out an application seeking for appointment of Advocate Commissioner in I.A.No.17 of 2017 and the trial Court appointed an Advocate Commissioner to note down the physical features. The Advocate Commissioner has also filed a report along with a plan before the trial Court. The report of the Advocate Commissioner and the plan have been annexed in the additional typed set of papers, filed by the learned Counsel for the petitioner. Mr.B.Saravanan, learned Government Advocate appearing for the respondents has not disputed the location of the petitioner's land as per the Advocate Commissioner's plan.

8. On a perusal of the Advocate Commissioner's report, it could be seen that he inspected and surveyed the land in question with the assistance of Firka surveyor, the Assistant Engineer of Public Works Department, K.Vairavanpatti Group Village Administrative Officer and the President of K.Vairavanpatti Panchayat. On a perusal of the report of the Advocate Commissioner and the plan annexed to it, it could be seen that the Kanmoi situates in a portion of the land in Survey No.49 on the eastern side and in the very same Survey Number, there is a North-South panchayat thar road which has been laid on the west of the Kanmoi. Further, west of the panchayat thar road, the land belonging to the petitioner in Survey Nos.172 and 174 is situated. The Advocate Commissioner's report and the plan clearly established that the petitioner's land situates only on the west of the panchayat thar road and not on the east of the panchayat thar road, where the Kanmoi situates.

9. When the panchayat had laid North-South road in Survey No.49 and also in Survey No.174/2, which was given by the vendor of the land to the petitioner as early as in 1968-1969, it cannot be stated that the



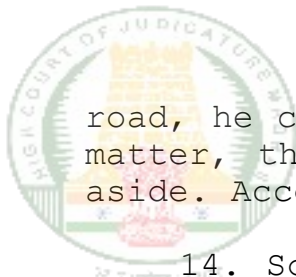
petitioner had encroached the water body. Unless the authorities found that the North-South panchayat thar road itself is an encroachment on the water body, the petitioner cannot be said to be an encroacher of the Kanmoi. It cannot be disputed that the North-South panchayat thar road divides the petitioner's land and the Kanmoi. The respondents have not considered the case of the petitioner in a proper manner. The respondents should have conducted field inspection before coming to the conclusion that the petitioner is an encroacher. Since the panchayat road has been laid several decades ago and the same is dividing the petitioner's land and the Kanmoi on the eastern side of the petitioner's land, the respondents should not have come to the conclusion that the petitioner had encroached the Kanmoi. There is nothing on record to establish that the petitioner had encroached the land on the east of the North-South panchayat thar road.

10. When there is no evidence to establish that the petitioner had encroached the land on the east of the North-South panchayat thar road, there cannot be any encroachment of the Kanmoi, which lies on the east of the North-South panchayat thar road. The respondents have not given any finding as to the existence of the North-South panchayat thar road on the west of the Maravanendal Kanmoi. Had it been taken into consideration by the respondents, they would not have come to the conclusion that the petitioner had encroached the Kanmoi.

11. In the judgment in ***Government of Andhra Pradesh Vs. Thummala Krishna Rao and Another*** reported in ***(1982)2 Supreme Court Cases 134***, the Honourable Supreme Court held that the summary proceedings for removal of encroachment can be initiated only where unauthorised occupation of Government property is not disputed, but where title to the land is *bona fide* disputed by the occupant, such dispute must be adjudicated not by the summary proceedings, but by a competent civil Court. Further the Honourable Apex Court held that the *bona fides* of the occupant's claim can be inferred from his occupation for a long period.

12. It is not the duration, short or long, of encroachment that is conclusive of the question whether the summary remedy prescribed by the Act can be put into operation for evicting a person. What is relevant for the decision of that question is more the nature of the property on which the encroachment is alleged to have been committed and the consideration whether the claim of the occupant is *bona fide*.

13. The documents produced by the petitioner, in support of his case, clearly established that he is in possession and occupation of the land on the west of the North-South panchayat thar road and not on the east of the said road. When he is not in possession and occupation of the land on the east of the North-South panchayat thar



road, he cannot be construed as an encroacher. In such view of the matter, the orders passed by the respondents are liable to be set aside. Accordingly the same are set aside.

14. So far as the execution of assignment for 23 cents of land in Survey No.49 in lieu of 40 cents of patta land in Survey No.174/2 in K.Vairavanpatti Group, Thiruppathur Taluk as per Board Standing Order 26-A is concerned, the petitioner is directed to produce all the relevant documents before the concerned authority and along with an application for assignment and on receipt of the same, the authorities shall pass orders in accordance with law, within a period of three months from the date of submission of the application and the documents.

15. With the above observations, the Writ Petition is allowed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

SSL

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 Special Commissioner &
Commissioner for Land Administration,
Chepauk, Chennai-600 005.
- 2.The District Collector,
Sivagangai District.
- 3.The Tahsildar,
Thiruppathur Taluk, Sivagangai District.

+3 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-31435[F]
dated 06/10/2021)

+1 CC to M/s.SPL.GP (SR-31517[F] dated 07/10/2021)

W. P (MD) No.14575 of 2021
06.10.2021

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