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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Order	Date of pronouncing the Order
12.07.2021	**22.07.2021**

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.P.(MD)No.24038 of 2018

K.Surulirajan .. Petitioner

Vs

1.The District Collector,
Madurai, Madurai District.

2.The Tahsildar,
Madurai North Taluk,
Madurai District.

3.The Block Development Officer,
Chettikulam Panchayat Union,
West Union,
Madurai District.

4.The Inspector of Police,
Oomachikulam Police Station,
Madurai District.

5.Muthumani .. Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a writ, order or direction in the nature of ***Writ of Mandamus***, directing the respondents 1 to 4 to remove the encroachment made by the fifth respondent in government poramboke land in S.No.171/12 and S.No.171/13, Chettikulam Village, Madurai North Taluk, Madurai District.

For Petitioner : Mr.R.J.Karthick
For R1 to R4 : Mr.A.K.Manickam,
Standing counsel for Government
For R5 : Mr.C.M.Arumugam

ORDER

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

The Writ of Mandamus has been filed by the petitioner to issue a direction to the respondents 1 to 4 to remove the encroachment made by the fifth respondent in Government Poramboke land in

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S.No.171/12 and S.No.171/13, Chettikulam Village, Madurai North Taluk, Madurai District.

2. We have heard Mr.R.J.Karthick, learned counsel appearing for the petitioner, Mr.A.K.Manickam, learned Standing Counsel for Government appearing for the Respondents 1 to 4 and Mr.C.M.Arumugam, learned counsel appearing for the fifth respondent.

3. The case of the petitioner is that he is functioning as Joint Secretary of CPI Party, West Madurai Region. As per the revenue records S.No.171/12 measuring 3.5 cents in Chettikulam, Madurai North Taluk, Madurai District is shown as Government poramboke vacant land. Further, the S.No.171/13 is shown as Government poramboke Street and it is used as a public street by the villagers. On the side of the said street there exists a drainage constructed north south by the panchayat union for the effluent of sewage. The fifth respondent owns land adjoining the above mentioned poramboke land. He worked as Block Development Officer of Madurai West Panchayat Union and recently retired from service. Taking advantage of his service in the same block, on 21.07.2018, the fourth respondent herein has illegally encroached the S.No.171/12 and S.No.171/13 by put up fencing and filled with red sand. Further, he has blocked the drainage passage and obstructed the free flow of drainage water also. The encroachment made in Government Poramboke vacant land disturbs the normal day to day activity of our villagers. Because of the encroachment made by the fourth respondent, the main ingress and egress of the Government Poramboke street is affected. The drainage water stagnant causes health hazarders to the villagers. Hence, the petitioner made a representation, dated 18.07.2018 to the Village Administrative Officer, Chettikulam Village. A criminal complaint was also given to the Oomachikulam Police Station regarding the said encroachment. During enquiry, the 5th respondent could not even produced 'B-Memo' with regard to the above mentioned survey numbers. On receipt of the criminal complaint, a part of the encroachment was removed. But the free flow of the drainage water is still affected and the encroachment made by the 5th respondent in S.No.171/12 still continues. The fifth respondent with an ill intention has filed a suit in O.S.No.198 of 2018 on the file of the District Munsif Court for permanent injunction with regard to S.No.171/13. In the plaint itselt, it has been clearly admitted by the fifth respondent that he has no patta for the above said property. The first respondent by his proceedings in Na.Ka.No.42539/2018/J3, dated 24.09.2018 has directed the respondents 2 and 3 to take action and submit a report. Even thereafter, there is no action on the side of the respondents. Therefore, the petitioner has filed this Writ Petition to remove the encroachment.

4. The fifth respondent filed counter and stated that, as far as Survey No.171/12 of the Chettikulam village, North Taluk of Madurai District is my property which was originally lies in survey

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No.124/1 part and classified as Sarkar poramboke and shown as vacant place in column no.13 of the Natham 'A' register. As far as the said property is concerned, it was purchased by his grandfather, namely; Rasu Pillai and grandmother Jothiammal vide registered sale deed Nos.5394/1957 dated 27.08.1957, 313/1971 dated 27.02.1971, 616/1980 dated 21.02.1980. So the allegation of the writ petitioner as if Survey No.171/12 is the Government poramboke is totally false and the fifth respondent has already initiated legal steps to rectify the wrong entry in the revenue records as early as on 30.07.2018 and 10.10.2018. At the same time Survey No.171/13 is concerned, it is the Government Poramboke Street but the writ petitioner along with others disturb the possession and enjoyment of the properties found Survey Nos.171/12 and 171/13 also. Hence, the fifth respondent was constrained to file two original suits in O.S. No.198 of 2018 pertaining to survey Nos.171/13 and O.S. No.258 of 2018 in respect of 171/12 in considering the same interim order was gratned in O.S. No.258/18 and the same is being extended till today. In Survey No.171/12 is concerned absolutely he has not made any encroachment as it is his own land inherited from my grandfather along with other legal heirs. Further, even in the letter written by the District Collector, dated 24.09.2018 to the Block Development Officer allegation is made in respect of Survey No. 171/13 alone, whereas the writ petitioner has also filed writ petition by comprising Survey No.171/12 intentionally. Therefore, the writ petition may be dismissed. He filed typed set of papers along with counter. He also filed plaint copy of O.S. No.258/2018, in which he admitted that the land in Survey No.171/13 belonged to Government and land in Survey No.171/12 belonged to his family. The fifth respondent has filed gift deed and settlement deed. But, these documents are related to only Survey No.124/1.

5. In support of his case, the writ petitioner filed copies of two adangal extracts, in which, S.No.171/12 is shown as Government Poramboke vacant site and S.No.171/13 is shown as Government Poramboke street.

6. The learned counsel appearing for the writ petitioner has stated that the subject lands are Government Poramboke land. As per his case, the fifth respondent encroached the land.

7. The learned counsel appearing for the fifth respondent would submit that the fifth respondent filed a suit in O.S.No.198 of 2018 against this writ petitioner and others for permanent injunction in which, Government was not a party. In the plaint, the fifth respondent/plaintiff has stated that the suit property is a Natham land surrounded by the patta lands vide S.Nos.121/1A and 171/12 of Chettikulam Village, North Taluk, Madurai District. The above said properties in S.Nos.121/1A and 171/12 belong to the family members of the fifth respondent/plaintiff which are bounding the suit property in the east west and southern side. He would further submit that the petitioner/defendant and others are third persons and

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absoluely they are having no semblance of right in any manner in respect of the suit property. However, presently as the petitioner and others are disturbing the peaceful possession and enjoyment of the fifth respondent/plaintiff over the suit property. He would further submit that he has not stated anything in the suit regarding his source of title and possession.

8. The learned Standing Counsel for Government appearing for the respondents 1 to 4 would submit that on the basis of the representation of this writ petitioner, on 24.09.2018, the first respondent sent a letter to the third respondent to inspect the property and take action to remove the encroachment, if any.

9. On 23.10.2018, the writ petitioner and some others issued advocate notice to the third respondent/Block Development Officer to remove the encroachment.

10. Inspite of repeated representation by the writ petitioner and others, the third respondent/Block Development Officer did not take any action to remove the encroachment. The third respondent also directed by the first respondent/District Collector to take action even in the year 2018. Till date, the encroachment was not removed.

11. The land encroachment is a social evil and it is a form of land grabbing, encroachment of Government property is a loss not only to the Government, but also for the public. The government properties are for the welfare of the public.

12. The Hon'ble Supreme Court of India in the case of ***Jacpal Singh Vs. State of Punjab reported in AIR 2011 SCC 1123,*** has held as follows:-

> *"...13. We find no merit in this appeal. The appellants herein were trespassers who illegally encroached on to the Gram Panchayat land by using muscle power/money power and in collusion with the officials and even with the Gram Panchayat. We are of the opinion that such kind of blatant illegalities must not be condoned. Even if the appellants have built houses on the land in question they must be ordered to remove their constructions and possession of the land in question must be handed back to the Gram Panchayat. Regularizing such illegalities must not be permitted because it is Gram Sabha land which must be kept for the common use of villagers of the village. The letter, dated 26.09.2007 of the Government of Punjab permitting regularization of possession of these unauthorized occupants is not valid. We are of*

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the opinion that such letters are wholly illegal and without jurisdiction. In our opinion such illegalities cannot be regularized We cannot allow the common interest of the villagers to suffer merely because the unauthorized occupation has subsisted for many years."

13. Some greedy people tried to encroach the Government property. Only the Government officials could take action against the encroachers. But even after representation by the public regarding encroachment in Government property, the officials have not take any action till date.

14. The encroachment in S.Nos.171/12 and 171/13 to be removed. The fifth respondent has not filed any document to show his title in S.No.171/12 and 171/13.

15. This Court taking into consideration of the above facts and circumstances of the case, directs the respondents 1 to 3 to expedite the process of inspection of the land in question with available revenue records, after giving notice to the writ petitioner and the fifth respondent, the fifth respondent may produce documents if any to the respondents-1 to 3, after enquiry they shall proceed against the encroacher in accordance with law and also adhering to the principles of natural justice and remove the encroachment, if any, within a period of ***twelve (12) weeks*** from the date of receipt of a copy of this order.

16. With the above directions, this Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar (CS-II)

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/ /2021

Sub Assistant Registrar(CS)

Ksa

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

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+1 CC to M/s.C.M.ARUMUGAM, Advocate (SR-23762[F] dated 23/07/2021)

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PS(CO)
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