

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2022

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

W.P.NO.4961 OF 2022

Chandra Prabha

... Petitioner

vs

1. The District Collector,
The District Collectorate Office,
Coimbatore District.
2. The Assistant Director,
Town Panchayat,
Collectorate Compound,
Coimbatore.
3. The Executive Officer,
Odayakulam Town Panchayat,
Odayakulam (First Grade) Town
Panchayat Office,
Odayakulam,
Coimbatore District - 642 129.
4. Alphin Xavier

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a writ of Mandamus directing the respondents 1 to 3 to demolish the construction and to remove the wall from the disputed site on the petitioner representation dated 07.12.2020.

For Petitioner : Mr.K.Gangadaran

For Respondents : Mr.A.Selvendran,
Special Government Pleader
for R1 and R2
Mr.P.Bala Dhandapani,
Special Government Pleader for R3

ORDER

[Order of this Court was delivered by T.RAJA, J.]

The petitioner has come to this Court for issuance of a writ of Mandamus seeking a direction to respondents 1 to 3 to demolish the construction and to remove the wall from the disputed site on the basis of her representation dated 07.12.2020.

2.Learned counsel appearing for the petitioner submitted that she had developed a house site layout, measuring to an extent of 1.90 acres in S.F. No.1027/2, situated at Odayakulam Village, which has been duly approved by the DRTCP in Ma.Va (Co.M) No.65/2007 and known as 'Chellam Nagar'. In order to reach the layout road, the petitioner and her labourers are having an access through her agricultural property, situated on the eastern side of the house site layout, which was formed by her. While so, one Alphin Xavier/ the fourth respondent herein purchased site No.14 of the said layout and in front of the same, by constructing a metallic shed in the said layout, he has been parking his vehicles and planting some plants in the said road, thereby blocking the petitioner's way to reach the agricultural field. Therefore, the petitioner preferred a complaint dated 07.12.2020 before the Executive Officer, Odayakulam Town Panchayat, Odayakulam, Coimbatore District, the third respondent herein in this regard. Since there was no response, the petitioner has given a representation dated 12.01.2021 to the third respondent reiterating the same. On receipt of the same, the third respondent sent a letter on 18.01.2021 informing the fourth respondent to remove the shed in the public road and not to disturb the peaceful use of the said public road. In spite of the same, the fourth respondent has not taken any step to remove the shed in the public road. In this regard, the petitioner issued a legal notice dated 06.03.2021 to the District Collector, Coimbatore District, the first respondent herein by marking copies to respondents 2 and 3. Therefore, the third respondent by letter dated 02.07.2021 sent a letter to the petitioner's counsel stating that the encroachment in the said 30 ft. wide road at Chellam Nagar has been fully removed. Since the fourth respondent has not removed parapet wall type constructions, dog shed on the southern side of the road and plants, which have been planted by him and thereby he has been blocking the said 30 ft. wide road, the petitioner is before this Court for the above direction.

3.Learned Special Government Pleader appearing for respondents 1 and 2 submitted that on the basis of the complaint given by the petitioner, action was taken, but, the fourth

respondent again re-planted the plants and constructed the dog shed. If the fourth respondent is repeatedly causing public nuisance, as per Section 6(2) of the Tamil Nadu Land Encroachment Act, 1905, action will be taken against him.

4. In this regard, it is relevant to extract Section 6(2) of the Tamil Nadu Land Encroachment Act, 1905 as under:

'(2) An eviction under this Section shall be made in the following manner namely - By serving a notice in the manner provided in Section 7 on the person reputed to be in occupation or his agent requiring him within such time as the Collector or the Tahsildar or Deputy Tahsildar or Authorised Officer may deem reasonable after receipt of the said notice to vacate the land, and, if such notice is not obeyed, by removing or deputing a subordinate to remove any person who may refuse to vacate the same, and if the officer removing any such person shall be resisted or obstructed by any person, the Collector or the Tahsildar or Deputy Tahsildar or authorised officer shall hold a summary inquiry into the facts of the case, and if satisfied that the resistance or obstruction was without any just cause and that such resistance or obstruction still continues, may issue a warrant for the arrest of the said person and on his appearance commit him to close custody in the office of the Collector or of any Tahsildar or Deputy Tahsildar or authorised officer for such period not exceeding 30 days as may be necessary to prevent the continuance of such obstruction or resistance or may send him with a warrant in the form of the schedule for imprisonment in the civil jail of the district for the like period: Provided that no person so committed or imprisoned under this Section shall be liable to be prosecuted under Section 183, 186 or 188 of the Indian Penal Code in respect of the same facts.'

5. A perusal of the same would show that if any such notice is not obeyed and if the officer removing any such person shall be resisted or obstructed by any person, the Collector or the Tahsildar or Deputy Tahsildar or authorised officer shall hold a summary inquiry into the facts of the case and if satisfied that the resistance or obstruction was without any just cause and that such resistance or obstruction still continues, they may issue a warrant for the arrest of the said person and on his appearance, may commit him to close custody in the office of the Collector or of any Tahsildar or Deputy Tahsildar or authorised officer for such period not exceeding 30 days as may be

necessary to prevent the continuance of such obstruction or resistance or may send him with a warrant in the form of the schedule for imprisonment in the civil jail of the District for the like period. Therefore, in the light of the above, if the fourth respondent is repeatedly causing public nuisance by planting plants in the public place and putting up dog shed, the first respondent or any other officer authorised by him is directed to proceed in accordance with law as per Section 6(2) of the Tamil Nadu Land Encroachment Act, 1905, by removing the encroachments, within a period of four weeks from the date of receipt of a copy of this order. With the above observation, this writ petition stands disposed of. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vga

To

1. The District Collector,
The District Collectorate Office,
Coimbatore District.
2. The Assistant Director,
Town Panchayat,
Collectorate Compound,
Coimbatore.
3. The Executive Officer,
Odayakulam Town Panchayat,
Odayakulam (First Grade) Town
Panchayat Office,
Odayakulam,
Coimbatore District - 642 129.

+1cc to Mr.K.Gangadaran, Advocate, S.R.No.15225

+1cc to the Government Pleader, S.R.No.15488

W.P.No.4961 of 2022

MG(CO)
RLP(24/03/2022)