

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2022

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

AND

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

W.P.NO.3822 OF 2022

Radhamani

... Petitioner

-vs-

1. The District Collector,
Salem District, Salem.
2. The Sub-Collector,
Mettur Taluk,
Salem District, Salem.
3. The Tahsildar,
Mettur Taluk,
Salem District.
4. The Block Development Officer,
Kolathur Panchayat Union,
Kolathur, Mettur Taluk,
Salem District.
5. Sellamuthu

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents 1 to 4 to remove the illegal encroachment made by the 5th respondent in the Government Land comprised in S.No.3/9B situated at Poosariyankadu, Subramaniapuram, Pannavdi Village, Kolathur Union, Mettur Taluk, Salem District by considering the petitioner's representation dated 25.11.2021.

For Petitioner : Mr.K.Prabhakaran
For Respondents : Mr.K.V.Sajeev Kumar, Spl.G.P.
for R1 to R3
Mr.Balathandayutham,
Spl.G.P. for R4

ORDER

(Order of the Court was made by T.RAJA, J.)

This Writ Petition has been filed seeking for issuance of a Writ of Mandamus, directing the respondents 1 to 4 to remove the illegal encroachment made by the 5th respondent in the Government Land comprised in S.No.3/9B situated at Poosariyankadu, Subramaniapuram, Pannavdi Village, Kolathur Union, Mettur Taluk, Salem District by considering the petitioner's representation dated 25.11.2021.

2. The grievance of the petitioner shows that the property comprised in S.No.3/9B situated at Poosariyankadu, Subramaniapuram, Pannavdi Village, Kolathur Union, Mettur Taluk, Salem District is classified as a pathway in the revenue records. The petitioner has also constructed a house abutting the said survey number and he is having only way to enter into his house through the said survey number 3/9B. While so, the 5th respondent has forcibly encroached the said pathway in S.No.3/9B. Such an illegal encroachment made by the 5th respondent has been causing grave hardship to the petitioner to enter into his house through the said pathway. Therefore, to remove the encroachment, a representation dated 26.02.2020 was given to the respondents 1 to 4 for taking action against the 5th respondent and removing the illegal encroachment. The 1st respondent forwarded the same to the 2nd respondent by his Proceedings dated 18.03.2021 in O.M.8006/2020, directing the 2nd respondent to inspect the aforesaid land and file a report before the 1st respondent. The 2nd respondent forwarded the same to the 3rd respondent and directed to take appropriate action against the petitioner's representation by his Proceedings dated 13.03.2020 in OM.502/2020.

3. The further grievance of the petitioner is that since the encroachment was made by the 5th respondent, the 4th respondent passed a Resolution by its Proceedings in Na.Ka.No.660/2020/A2 dated 29.05.2020 to remove the same and served a notice on the 5th respondent and the encroachment was removed on 16.06.2020 from the 5th respondent. But as the 5th respondent has once again encroached the said land in Survey No.3/9B putting obstacles, fresh representations were given on

25.11.2022 and 01.11.2021 respectively to the 2nd respondent. The same were also forwarded to the 3rd respondent for taking action against the 5th respondent, if any encroachment is found, but no action has been taken. The failure on the part of the respondents 1 to 4 to remove the encroachment is unfair and unjustified. Therefore, the petitioner has filed this Writ Petition seeking to remove the encroachment put up by the 5th respondent.

4. Mr.K.V.Sajeevkumar, learned Special Government Pleader taking notice for the respondents 1 to 3 submitted that the encroachment has already been removed from the Survey No.3/9B. After the encroachment was removed on 15.09.2020, the petitioner and the 5th respondent Sellamuthu have filed two suits. The petitioner has filed O.S.No.27/2020 whereas the 5th respondent has filed O.S.21/2020 before the learned District Munsif, Mettur. When both the suits are pending, the petitioner cannot maintain the present Writ Petition as parallel proceedings are not permissible in law for the same relief because if this Court entertains this Writ Petition, that will have serious impact on the pending suits.

5. We find some merits on the submissions of the learned Special Government Pleader appearing for the respondents 1 to 3. The reason being that both the petitioner and the 5th respondent appeared to have filed civil suits before the concerned civil forum and the learned Counsel for the petitioner has not even mentioned about the pending of the civil suit filed by him before this Court. As rightly canvassed by the learned Special Government Pleader for the respondents 1 to 3, no parallel proceedings are permissible in law for the same relief. More over, this Court can not entertain this Writ Petition as any observation to be made by us will have direct ramification in the pending suit before the learned District Munsif, Mettur. Therefore, we find no merits in the present Writ Petition.

6. In the result, the Writ Petition fails and the same is accordingly dismissed as not maintainable. No costs. However, it is made clear that the trial court shall try the suits filed by the parties, without being influenced by any of the observations made in this Writ Petition.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector,
Salem District, Salem.
2. The Sub-Collector,
Mettur Taluk,
Salem District, Salem.
3. The Tahsildar,
Mettur Taluk, Salem District.
4. The Block Development Officer,
Kolathur Panchayat Union,
Kolathur, Mettur Taluk,
Salem District.

+1cc to Mr.K.Prabhakaran, Advocate, S.R.No.12902

+1cc to the Government Pleader, S.R.No.13016, 13063

W.P.No.3822 of 2022

GMR(CO)
RLP(01/04/2022)