



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.4527 of 2022

A.Balachander

.. Petitioner

Vs

1. The District Collector,
Villupuram Collectorate Office,
Villupuram District.
2. The Sub-Collector,
Tindivanam,
Villupuram District.
3. The Tahsildar,
Tindivanam,
Villupuram District.
4. The Commissioner,
Tindivanam Municipality,
Villupuram District.

.. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus to call for the records of the eviction notice issued by the fourth respondent through his proceedings in Na.Ka.No.3473/F1/2020 dated 25.01.2022 and quash the same as illegal, arbitrary and non-est in laws and also forbear the fourth respondent from taking any coercive action to dispossess or demolish the structure in Survey No.6 to an extent of 987.76 sq. ft., Block No.1, Ward No.C, Avarapakkam Village, Tindivanam Taluk without following any due process of law.



WEB COPY

For the Petitioner : Mr.D.Mohammed Aseef

For the Respondent : Mr.P.Muthukumar
State Government Pleader
for respondents No.1 to 3

: Mrs.V.Yamunadevi
for respondent No.4

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

This writ petition has been filed to challenge the notice dated 25.1.2022 issued by the fourth respondent. The challenge to the notice has been made mainly on the ground of competence of the Commissioner, Tindivanam Municipality to issue notice under Section 362 of the Tamil Nadu District Municipalities Act, 1920 [for short, "the Act of 1920"].

2. Learned counsel for the petitioner submitted that the land in question is classified as an Odai and thus the action does not fall under the Act of 1920, rather the power to take action lies with the Tahsildar concerned under Sections 7 and 6 of the Tamil Nadu Land Encroachment Act, 1905 and, therefore, the impugned notice deserves to be quashed.

3. Learned Government Pleader appearing for the respondents 1 to 3 has contested the writ petition and submitted that so far as Survey No.25/8 (now new S.No.3) is concerned, it has been classified as Government Padhai poramboke (pathway) as per the revenue records. Therefore, the fourth respondent is competent to take action in the matter. It is not that without following the procedure, the fourth respondent is removing the encroachment raised by the petitioner.

4. At this stage, learned counsel for the petitioner submitted that as per the judgment of the Full Bench of this Court in the case of Ramaraju v. The State of Tamil Nadu, rep by its Secretary to Government, Revenue Department, Fort St. George, Chennai and others, reported in 2005 (2) CTC 741, the Tindivanam Municipality is not competent to issue the impugned notice and for that paragraph 38(6) of the said judgment has been referred and for ready reference, paragraph 38(6) is quoted hereunder:

"38. It is of course true that in the two counter affidavits, the municipalities have taken the stand, quite expectedly and understandably, that



WEB COPY

they have no intention to take any step for removal of any encroachment from the road or road margins without following the due procedure of law and they do not have the intention to take steps for eviction of any person from any land not belonging to the municipalities. However, since the news item appearing in the News Papers gives the impression as if Rajapalayam Municipality intended to remove all encroachments pursuant to the order passed by the High Courts in W.P.No.689 of 2005 and since certain misconceptions have arisen as if the Division Bench has given a blanket direction for removal of encroachment even without following due process of law, the matter is required to be clarified in the following manner:

- (1) ...
- (2) ...
- (3) ...
- (4) ...
- (5) ...

(6) If the encroachment is on the land belonging to the Local Authorities, but such land is not part of the road or road margin or roadside land, eviction can be effected by following the procedure contemplated in law, namely, either by taking recourse to the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 or any other law applicable or otherwise by taking recourse to Civil Courts and not by use of unilateral force.

- (7) ...
- (8) ...
- (9) ..."

5. We have considered the rival submissions and perused the materials available on record.

6. The counter to the writ petition filed by the fourth respondent shows that the fourth respondent is taking action as per the provisions of law and it has not been barred by the judgment of the Full Bench of this Court, supra, rather the action provided under the statute cannot be defeated. Learned counsel appearing for the petitioner is unable to show that the land in question is not falling under Tindivanam Municipality.

7. In view of the above, the challenge to the impugned notice on the ground of the competence of the Commissioner,



Tindivanam Municipality cannot be accepted, because as per the counter filed by the fourth respondent, the land is situate within the territory of Tindivanam Municipality.

8. For all the reasons, we do not find any ground to cause interference in the impugned notice for removal of the encroachment. The writ petition fails and accordingly, the same is dismissed. No costs. Consequently, W.M.P.Nos.4655 and 4657 of 22 are closed.

Sd/-
Assistant Registrar

True Copy//

Sub Assistant Registrar

bbr

To:

1. The District Collector,
Villupuram Collectorate Office,
Villupuram District.
2. The Sub-Collector,
Tindivanam,
Villupuram District.
3. The Tahsildar,
Tindivanam,
Villupuram District.
4. The Commissioner,
Tindivanam Municipality,
Villupuram District.

+1cc to Mr.D.Mohammed Aseef, Advocate, S.R.No.26667

+1cc to Mrs.V.Yamunadevi, Advocate, S.R.No.26100

W.P.No.4527 of 2022

MG[co]
NSK 26/04/2022