

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2022

CORAM:

THE HONOURABLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE
AND
THE HONOURABLE MRS.JUSTICE N.MALA

W.P.NO.12325 OF 2022
AND
W.M.P.NO.11777 OF 2022

1. T.Vardadharajan
2. K.Nallusamy
3. K.Murugesan
4. Nallammal

... Petitioners

Vs.

1. The Revenue Divisional Officer,
Office of Revenue Division,
Tiruchengode.
2. The Tahsildar, Tiruchengode.
3. The Block Development Officer (BD) (VD),
Mallasamudram,
Namakkal District.
4. The Revenue Inspector,
Mallasamudram,
Namakkal District.
5. The President of Panchayat Union,
Mallasamudram Post,
Tiruchengode Taluk,
Namakkal District.

.. Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records pertaining to the impugned notices issued by the 5th respondent on 10.11.2021 and 09.12.2021 and quash the same.

For Petitioner : Mr.R.Marudhachalamurthy
For Respondents : Mr.P.Muthukumar State Govt. Pleader,
assisted by Mrs.R.Anitha
Spl. Govt. Pleader

ORDER

(The Order of the Court was made by The Honourable Chief Justice)

By this Writ Petition, challenge is made to the notices dated 10.11.2021 and 09.12.2021 directing the petitioners to vacate the land encroached by them.

2. The Writ Petition has been filed questioning the authority of the President of Panchayat Union to cause notice, because power to enforce eviction is given only to the Executive Officer or the Commissioner under Section 131 of the Tamil Nadu Panchayats Act, 1994. Accordingly, the prayer is made to quash the impugned notices.

3. Reference to the judgment of a Division Bench of this Court in the case of G.Radhakrishnan Vs. The President, Edayakottai Panchayat, reported in MANU/TN/9984/2007 = 2008 (3) LW 548 = 2008 (1) MLJ 1132 (W.P.(MD).No.8003 of 2007, dated 30.10.2007), has been given to support the arguments.

4. We have considered the submissions made by the learned counsel on either side and perused the materials available on record.

5. The notices under challenge is to direct the petitioners to vacate themselves from the lands encroached by them and in case the encroachment is not removed, then the Panchayat Union would proceed as per the provisions of law.

6. The said notices have been challenged mainly on the ground of competence, referring to Section 131 of the Tamil Nadu Panchayats Act, 1994. Section 131 is quoted hereunder:

"Section 131: Prohibition against obstructions in or over public roads, etc.--
(1) No person shall except as permitted by Rules made under this Act and except in accordance with the conditions imposed by any licence made requisite by such Rules--

(a) build any wall or erect any fence or other obstruction or projection or make any encroachment whatsoever, whether permanent or temporary, in or over any public road or any property vested in or belonging to or regulated or owned by, a Village Panchayat or Panchayat Union Council;

(b) make any hole or deposit any matter in or upon any public road or any property vested in or belonging to or regulated or owned by, a Village Panchayat or Panchayat Union Council;

(c) work a quarry in or remove stone, earth or other material from any place within twenty metres of a public road or of other immovable property vesting in or belonging to a Village Panchayat or Panchayat Union Council, provided that nothing in this clause shall be deemed to apply to any work which, in the opinion of the Inspector, is done in connection with a bona fide agricultural operation;

(d) erect any building over any drain or any part thereof;

(e) plant any tree on any public road or other property vesting in or belonging to a Village Panchayat or a Panchayat Union Council; or

(f) fell, remove, destroy, lop or strip bark, leaves, or fruits from, or otherwise damage, any tree which is growing on any such public road or other property or on any poramboke land, the use of which is regulated by a Village Panchayat under Section 134 or Section 135 and the right to which has not been established by such person as vesting in or belonging to him.

(2) It shall be the duty of the Village Administrative Officer of every revenue village to report on encroachments on properties vested in Village Panchayats or Panchayat Union Councils to the Executive

Authority or the Commissioner concerned and to the officer of the Revenue Department, and it shall be the duty of the Executive Authority or the Commissioner concerned either suo motu or on obtaining a report from the Village Administrative Officer in this regard to institute proceedings under this Act and secure the removal of the encroachments within such time as may be specified by the Government by general or special order. If the removal of the encroachments has not been secured within the period specified in such order, the officers of the Revenue Department shall institute proceedings under the Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act III of 1905) and secure such removal."

7. Section 131(2) of the Act of 1994 allows Village Administrative Officer to report on encroachments on properties vested in the Village Panchayats or Panchayat Union Councils to the Executive Authority or the Commissioner concerned and to the Officer of the Revenue Department, and they would be duty bound to either suo-motu or on obtaining a report from the Village Administrative Officer, to institute the proceedings under the Act of 1994 and secure the removal of encroachments by initiating proceedings under the Act of 1994.

8. In the light of the aforesaid, exercise or action to evict the petitioners, can be taken only by the Executive Authority or the Commissioner. The power of the Village Administrative Officer now vests with the President of the Panchayat Union. Therefore, if they want to remove the encroachment made by the petitioners, the matter is to be reported to the Executive Authority or the Commissioner, as the case may be, if it has not yet been reported. On reporting the matter to those authorities, the eviction can be effected after applying the procedures given under the Tamil Nadu Land Encroachment Act of 1905.

9. The impugned notices caused by the President of the Panchayat Union, are not to evict the petitioners by themselves, but only by due process of law and the provisions of law have been indicated above by referring to Section 131 of the Act of 1994.

10. Thus, we do not find any reason to cause interference in the impugned notices, as they otherwise refer to the eviction

only by the process of law and the eviction of the petitioners can be as per Section 131 of the Act of 1994.

11. The Writ Petition is disposed of with the aforesaid observations. There shall be no order as to costs. Consequently, W.M.P. is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

dsn/cs

To

1. The Revenue Divisional Officer,
Office of Revenue Division,
Tiruchengode.
2. The Tahsildar,
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Mallasamudram Post,
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Namakkal District.

+1cc to M/s.R.Marudhachalamurthy, Advocate, S.R.No.35824

+1cc to the Government Pleader, S.R.No.35922

W.P.No.12325 of 2022

GJ(CO)
RLP(22/06/2022)