



W.P.No.27801 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2022

CORAM

**THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE
and**

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

**W.P.No.27801 of 2022
and W.M.P.No.27100 of 2022**

N.Maraimani

.. Petitioner

-VS-

1. The District Collector,
Office of District Collector,
Chengalpattu and District.

2. The Commissioner,
Maduranthagam Municipality,
Maduranthagam, Chengalpattu District.

3. The Tahsildar,
Maduranthagam Tahsildar Office,
Maduranthagam and Taluk,
Chengalpattu District.

..Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus to call for the records of the second respondent impugned notice dated 07.10.2022 bearing its Na.Ka. No. 1414/2022/E, quash the same as illegal and against the law and forbearing the 2nd respondent from interfering, demolishing, evicting or removing the petitioner's possession of his house measuring an extent of 128 Square Meter and Shed measuring



W.P.No.27801 of 2022

an extent of 36 Square Meter situated in Ward No. A Block No. 76 town Survey No. 7/2 of Maduranthagsam Village and Taluk and Cart track/road measuring its length of 200 meter which is situated in west and Northern Side Boundaries of the tank comprised in Town Survey No. 7/2 of Maduranthagam Village and consequently directing the respondents to consider petitioner's representation dated 03.10.2022 for the above said cart track/road usage rights.

For Petitioner : Mr.P.Rajendra Babu

For Respondents : Mr.J.Ravindran
Addl. Adv. General
assisted by Mr.A.Selvendran,
Spl.G.P. for RR 1 and 3

: Mr.P.Muthukumar
State Govt. Pleader for R-2

* * * * *

ORDER

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

Mr.N.Maraimani, S/o.Late R.H.Nathan, has filed this writ petition challenging the impugned proceedings dated 07.10.2022 issued by the Commissioner, Maduranthagam Municipality, the second respondent herein as the same is illegal, with a consequential prayer to forbear the respondents from interfering, demolishing, evicting or removing the petitioner's possession of his house measuring an extent of 128



W.P.No.27801 of 2022

Square Meter and Shed measuring an extent of 36 Square Meter situated in Ward No. A Block No. 76 town Survey No. 7/2 of Maduranthagsam Village and Taluk and Cart track/road measuring 200 meters length adjoining the tank comprised in Town Survey No. 7/2 of Maduranthagam Village, by considering the representation of the petitioner dated 03.10.2022.

2. The learned counsel appearing for the petitioner submits that the petitioner's father owned agricultural lands of 12 acres in Old Survey Nos.775/1, 794/1 and 2,795/1, 837/1B, 3B1, 3B2, 3B3, 840, 843/1 and 3, present T.S.Nos.3/1 to 8, 5/1 to 4, 6/1 and 7/1. The petitioner's father had constructed a small house in his patta land comprised in Survey No.840 and a major portion of the house is situated in patta Survey No.840 and a part of the house, measuring an extent of 120 sq.meter, is situated in Govt. Poramboke land comprised in S.No.796, T.S.No.7/2. The agricultural lands and the house are all adjoining properties and the petitioner's father died intestate on 11.06.2017 leaving behind his wife, three sons and three daughters. After the demise of the petitioner's father, the legal heirs including the petitioner have inherited the aforesaid lands and became the absolute



W.P.No.27801 of 2022

joint owners of the properties. The second respondent Municipality has also assessed property tax for the house property and they are paying the property tax to the second respondent for the house till date.

3. It is submitted that one of the tanks known as Vannankuttai in Maduranthagam village is situated adjoining the agricultural lands and house property of the petitioner. The tank is situated in a Government poromboke land comprised in Old Survey No.790 and T.S.No.7/2. The lands of the petitioner are situated on the backside of the tank, i.e., northern side of the tank and the Maduranthagam-Thachur Road is situated on the southern side of the tank. There exists a 30 feet wide cart track on the west and northern side of the tank and it starts from Thachur road from south to north on the western side of the tank and turns from west to east on northern side of the tank and the cart track's distance is approximately 200 meters. It is stated that for the past 70 years, the petitioner's father and his vendors have been using the cart track for doing agricultural works. While so, the second respondent issued Form-A notice dated 22.08.2022 under the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975,



W.P.No.27801 of 2022

alleging that part of house property bearing Door No.20/A, Ward-A, Block-76, Town Survey No.7/2, Gandhi Nagar, Maduranthagam, measuring an extent of 128 sq. meter and the adjoining shed measuring 36 sq. meter have been built in Government poromboke land unauthorisedly and therefore, it should be removed. On receipt of the notice, a reply was given stating that the major portion of house is constructed in patta land survey No.840 and the cart track has been used as road for the past 7 decades to reach the petitioner's house and agricultural lands and therefore, they should be permitted to use the cart track road to reach their house and agricultural lands. But, all of a sudden, the impugned notice has been issued to demolish the encroached portion on the land in question, which is illegal and against law.

4. It is also submitted that the second respondent has no right to proceed under the T.N. Public Premises (Eviction of unauthorised occupants) Act, 1975 and only the local body has got powers to remove the encroachments on the street, road and the second respondent has no power to remove encroachment in any tank or waterbody and the PWD department or the Revenue authority has got



W.P.No.27801 of 2022

power. On the aforesaid grounds, the impugned notice is sought to be quashed.

5. On the above pleadings, the learned Special Government Pleader appearing for respondents 1 and 3 and the learned State Government Pleader appearing for the second respondent, placing on record the written instructions, submitted that the waterbody comprised in (Old Survey No.796) Town Survey Ward A, Block 76, Town Survey No.7/2 of 12400 sq.m. was surveyed and has been classified as 'Kulam Sarkar Poramboke' as mentioned in the Survey records and it is an admitted case of the petitioner himself that the petitioner and his brothers have encroached the waterbody to an extent of 128 sq.m. and 36 sq.m. out of total extent of 2400 sq.m. of waterbody. Therefore, notices were issued under Section 5(1) of the Tamil Nadu Public Premises Act 1/1975 to the petitioner and his brothers to remove the encroachment, pursuant to which action was taken by the Municipality for removal of encroachment with the assistance of police and revenue department personnel. At that time, the petitioner and his family members sought for one week's time to evict by themselves. When the petitioner and his family members



W.P.No.27801 of 2022

themselves have given an undertaking to remove the encroachment, they cannot come to this Court by filing this writ petition.

6. It is also brought to our notice by the learned counsel for the respondents that an administrative sanction was accorded vide G.O. (Ms) No.59, MA & WS Department, dated 22.04.2022, for rejuvenation of Vannankulam at Gandhi Nagar in Madhuranthagam Municipality at an estimated cost of Rs.90 lakhs under Kalaignar Nagarpura Mempattu Thittam (KNMT 2021-2022) scheme and nearly 60% of the work has been completed and this encroachment has to be removed so as to complete the rest of the work before the onset of monsoon. Therefore, if the petitioner is allowed to continue with the encroachment, the above project would unnecessarily be delayed and due to passage of time, the escalation cost would also increase and that would also unnecessarily give burden to the State Government. Therefore, it is submitted that no interference is called for.

7. We find that the petitioner has himself admitted in his affidavit that there has been an encroachment for which notices have been issued to the petitioner and his brothers. Secondly, an administrative



W.P.No.27801 of 2022

WEB COPY

sanction was accorded for rejuvenation of Vannankulam at an estimated cost of Rs.90 lakhs under Kalaingar Nagarpura Mempattu Thittan (KNMT 2021-2022) scheme. When the respondents proceeded to survey the waterbody in (Old Survey No.796) Town Survey Ward A, Block 76, Town Survey No.7/2 of 12400 sq.m, the petitioner and his brothers were found to have encroached the waterbody to an extent of 128 sq.m. in the house property and 36 sq.m. in the adjoining shed and therefore, notices were issued for eviction. Therefore, we find that the petitioner cannot maintain the writ petition for the simple reason that he has encroached into a waterbody, which cannot be allowed to continue and also in view of the sanction accorded for rejuvenation of waterbody under a Government scheme.

Accordingly, the writ petition cannot be entertained and the same is dismissed. No costs. Consequently, W.M.P.No.27100 of 2022 is also dismissed.

(T.R., ACJ.) (D.K.K, J.)
18.10.2022

Speaking/Non-speaking order
Index : Yes / No

sra

Page 8 of 10



W.P.No.27801 of 2022

WEB COPY To

1. The District Collector,
Office of District Collector,
Chengalpattu and District.
2. The Commissioner,
Maduranthagam Municipality,
Maduranthagam, Chengalpattu District.
3. The Tahsildar,
Maduranthagam Tahsildar Office,
Maduranthagam and Taluk,
Chengalpattu District.



WEB COPY



W.P.No.27801 of 2022

T.Raja, ACJ.
and
D.Krishnakumar, J.

(sra)

W.P.No.27801 of 2022

18.10.2022