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W.P.(MD)No.11933 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.06.2022

CORAM

THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**

and

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

W.P(MD)No.11933 of 2022

R.Katturaja

... Petitioner

Vs.

- 1.The District Collector,
Office of the District Collector,
Madurai District.
- 2.The Revenue Divisional Officer,
Office of the Revenue Divisional Officer,
Usilampatti, Madurai District.
- 3.The Tahsildar,
Office of the Tahsildar, Peraiyur Taluk,
Madurai District.

4.N.Palanisamy

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, to direct the Respondent Nos.1 to 3 to remove the encroachment made by the Respondent No.4 in the light of the proceedings passed by the Respondent No.2 in O.Mu.No.1761/2022/A4, dated 10.05.2022 in accordance with law within a time stipulated by this Court.

For Petitioner

:Mr.M.Maharaja

For R1 to R3

:Mr.N.Satheesh Kumar

Additional Government Pleader

ORDER

(Order of the Court was made by **S.S.SUNDAR, J.**)

This Writ Petition has been filed for issuance of a Writ of Mandamus to direct the Respondent Nos.1 to 3 to remove the encroachment made by the Respondent No.4 in the light of the proceedings passed by the Respondent No.2 in O.Mu.No.1761/2022/A4, dated 10.05.2022 in accordance with law within a time stipulated by this Court.



2.Heard Mr.M.Maharaj, learned Counsel for the petitioner and Mr.N.Satheesh Kumar, learned Additional Government Pleader, who takes notice on behalf of respondents 1 to 3. By consent of both parties, this Writ Petition is taken up for final disposal at the stage of admission itself.

3.It is the definite case of the petitioner that the fourth respondent has encroached the village public pathway and thereby, preventing the villagers from using the said pathway to its full extent. When it was reported to the Revenue Divisional Officer, Usilampatti, it is seen that the Revenue Divisional Officer, Usilampatti, has requested the Tahsildar concerned, to take appropriate action on the petition filed by the Writ Petitioner.

4.The learned Additional Government Pleader, on instructions, stated that the Tahsildar has also initiated appropriate proceedings. However, the communication sent by the Tahsildar, to the Revenue Inspector and the Village Administrative Officer, indicates that the Tahsildar has requested the Revenue Inspector and the Village Administrative Officer to send a report on the complaint made by the petitioner.

5.If there is an encroachment over the public pathway in a village, it is the duty of the local body to ensure that the entire public road is available and maintained for the public. Section 236 of the Tamil Nadu Panchayats Act, 1994, reads as follows:

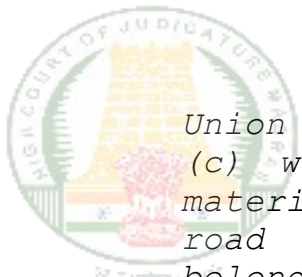
"236. Public roads, markets, wells, tanks, etc., to be open to all.- All roads, markets, wells, tanks, reservoirs and waterways vested in or maintained by a Panchayat shall be open to the use and enjoyment of all persons, irrespective of their caste or creed."

6.However, the power to deal with the encroachment is available under Section 131 of the Tamil Nadu Panchayats Act, 1994, which reads as follows:

"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, 1[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 1[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];

(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 bonafide agricultural operation;

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

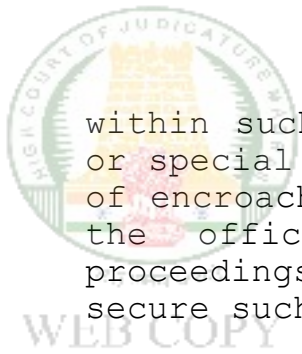
(e) plant any tree on any public road or other property vesting in or belonging to a Village Panchayat or a Panchayat Union Council: or

(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 2[it shall be the duty of the Executive Authority or the Commissioner concerned either suo motto 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.Under Section 131(2) of the Tamil Nadu Panchayats Act, 1994, as extracted above, the Village Administrative Officer of every revenue village is expected to file a report on the encroachment on property 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 is 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 the Tamil Nadu Panchayats Act, 1994 and secure the removal of the encroachments



within such time, as may be specified by the Government by general or special order. If the local body is unable to secure the removal of encroachment by exercising the power vested with them by orders, the officers of the revenue department alone can initiate proceedings under the Tamil Nadu Land Encroachment Act, 1905, and secure such removal.

8. Section 242 of the Tamil Nadu Panchayats Act, 1994, empowers the Government to make rules generally to carry out the purpose of the Act. Section 242 (34) of the Act reads as follows:

"242. Power of Government to make Rules.- (1) The Government shall in addition to the Rule making powers conferred on them by any other provision contained in this Act, have power to make rules generally to carry out the purposes of this Act.

[(1-A) A Rule under Section 188 may be made so as to have retrospective effect on and from a date not earlier than the 26th day of March 1997.]

(2) In particular, and without prejudice to the generality of the foregoing power, the Government may make Rules-

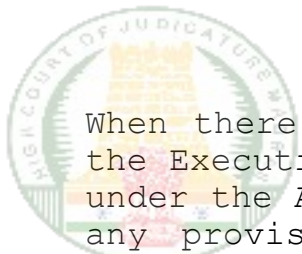
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(xxxiv) for the removal of encroachments of any description from public roads vesting in Panchayat and the repair of any damage caused to such roads by the person causing the damage or at this expense;"

9. In exercise of the power conferred under Clause-XXXIV of Sub-Section 2 of Section 242 r/w Section 131 of the Tamil Nadu Panchayats Act, 1994, the State Government has framed Tamil Nadu Panchayats (Prohibition against obstruction in or over public roads, removal of encroachments, etc.) Rules, 2000. Under Rule 5 of the said Rules, the Executive Authority or the Commissioner may by notice require the occupier of any premises to remove or alter any projection, encroachment or obstruction situated against or in front of such premises and in or over any public road vesting in the Village Panchayat or Panchayats Union Council.

10. Even under the Rule specifically framed for removal of encroachment, the duty is not vested with any Executive Authority or the Commissioner of Panchayats to remove the encroachment in case the occupier or encroacher fails to comply with the notice issued by the Commissioner or the Executive Authority under Rule 5 of the Rules. It is also the position that there is no executive order from the State Government empowering the Executive Authority to institute proceedings under the Act to secure the removal of encroachment, as contemplated under Section 131(2) of the Act.

11. Therefore, it is open to the local body to exercise the power under Section 131(2) of the Tamil Nadu Panchayats Act, 1994.



When there is a construction over the public street, it is open to the Executive Authority or the Commissioner to institute proceedings under the Act, to secure the removal of encroachment by resorting to any provisions under the Tamil Nadu Panchayats Act, 1994. For example, if there is any illegal construction put up by any third party into the public street, it is open to them to take action for violation of building rules to stop the construction activities. However, in case, the removal of encroachment is not secured within the period specified in such order, it is only the revenue department can institute proceedings under the Tamil Nadu Land Encroachment Act, 1905, and secure the removal of encroachment. Therefore, it is always open to the local body to approach the revenue department, in case the local body is unable to secure the removal of encroachment by resorting to either one of the provisions of the Act.

12. In the light of the discussion above, this Court is inclined to pass following order:

(1) The Tahasildar/third respondent is directed to make a local inspection and find out whether the fourth respondent has encroached into any portion of the public road. Upon report, the Inspection of survey by the Tahsildar shall be conducted within a period of three weeks from the date of receipt of a copy of this order, in the presence of the petitioner as well as the fourth respondent and the local body, namely, the Executive Authority or the Commissioner concerned.

(2) The report of the Tahsildar shall be communicated to the petitioner, as well as to the fourth respondent, apart from being served on the Block Development Officer, who will take further action, as contemplated under the Rules above referred to.

(3) The Block Development Officer or the Executive Authority of the Panchayat concerned shall take action at their end within a period of four weeks from the date of receipt of a report from the Tahsildar with regard to the encroachment, as per the revenue documents.

(4) The Executive Authority is directed to pass appropriate order, as contemplated under the Act and the Rules above referred to and do all possible things under the Act by stopping the construction and any other activities.

(5) In case, the local body or the Executive Officer is unable to secure the possession by removing the encroachment, then it is for the revenue department to take appropriate action by resorting to the Tamil Nadu Land Encroachment Act, 1905.

(6) If the fourth respondent is in encroachment of the public road and in case, the local body is unable to secure the possession, then it is for the Tahsildar to initiate appropriate action within a period of six weeks from the date of receipt of a report from the Executive Authority of the Panchayat, as regards the failure to secure possession or other means.



(7) Before the removal of encroachment either under the provisions of Tamil Nadu Panchayat Act and the Rules above referred to, a show cause notice shall be issued to the encroacher as well as the petitioner and take further action in accordance with law.

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13. With the above directions, this Writ Petition is disposed of. No costs.

14. Registry is directed to mark a copy of this order to the Block Development Officer, Sedapatti Union, Madurai and the President, Thullukutti Nayakkanur, Peraiyur Taluk, Madurai District.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/06/2022

Sub Assistant Registrar(CS)

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To

1. The District Collector,
Office of the District Collector,
Madurai District.
2. The Revenue Divisional Officer,
Office of the Revenue Divisional Officer,
Usilampatti, Madurai District.
3. The Tahsildar,
Office of the Tahsildar, Peraiyur Taluk,
Madurai District.
4. The Block Development Officer,
Sedapatti Union, Madurai.
5. The President,
Thullukutti Nayakkanur, Peraiyur Taluk,
Madurai District.

+1 CC to M/s.SPL.GP (SR-26767[F] dated 20/06/2022)

W.P(MD)No.11933 of 2022
16.06.2022

nsn(CO)

TR(28.06.2022) 6P 7C