



WEB COPY

W.P(MD)No.11989 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.11989 of 2022

C.Uthayakumar

... Petitioner

Vs.

1.The District Collector,
Kanyakumari District,
Nagercoil.

2.The Executive Officer,
Keezhkulam Town Panchayat,
Keezhakulam Post,
Kanyakumari District.

3.Mrs.Sundari

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 and 2, to remove the encroachment made at Manalthattuvilai in the Villarivilai Road of Keezhkulam Town Panchayat, Kanyakumari District by considering the representation of the petitioner dated 16.05.2022 within a stipulated period that may be fixed by this Honourable Court.

For Petitioner

:Mr.S.Sivakumar

For R-1

:Mr.N.Satheesh Kumar

Additional Government Pleader

For R-2

:Mr.S.P.Maharajan,

Special Government Pleader

ORDER

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

Heard Mr.S.Sivakumar, learned counsel for the petitioner. Mr.N.Satheesh Kumar, learned Additional Government Pleader for the first respondent and Mr.S.P.Maharajan, learned Special Government Pleader for the second respondent.

2. Having regard to the nature of the order proposed to be passed by this Court, no notice is necessary to the third respondent, who is impleaded as an encroacher.

<https://hcservices.ecourts.gov.in/hcservices/>



3. This Writ Petition has been filed for issuance of a Writ of Mandamus, directing the respondents 1 and 2 to remove the encroachment made at Manalthattuvilai in the Villarivilai Road of Keezhkulam Town Panchayat, Kanyakumari District, by considering the representation of the petitioner dated 16.05.2022.

4. The petitioner is a resident of Keezhkulam Panchayat. The grievance of the petitioner is that there is a small road with a width of 16 feet known as Villarivilai Panchayat Road which connects Thengapattinam-Karingal Road. Stating that the transport buses are operated through this road, for the convenience of the residents of the village and the obstruction caused by the third respondent by encroachment of the small road should be removed for the public use, the petitioner has given a representation to the District Collector, Nagercoil, for removal of the obstruction caused by the third respondent. The said representation is not considered so far and hence, the petitioner has come forward with this writ petition.

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 executive 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.]

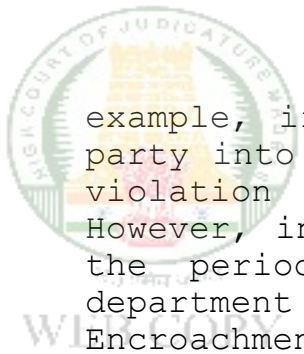
(2) *In particular, and without prejudice to the generality of the foregoing power, the Government may make Rules-*

*.....
(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 encroachment 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 who 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 petitioner shall make a representation afresh to the Tahsildar, Executive authority and Block Development Officer of the concerned Union, within a period of two weeks from the date of receipt of a copy of this order and on such representation, the Tahsildar concerned is directed to make a local inspection and find out whether the third respondent has encroached into any portion of the public road. The Inspection and survey by the Tahsildar shall be conducted within a period of three weeks from the date of receipt of the representation from the petitioner, in the presence of the petitioner as well the third respondent and the local body, namely, the Executive Authority of the panchayat concerned.

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

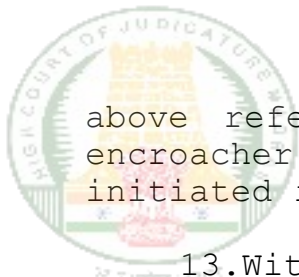
(3) The Block Development Officer or the Executive Authority of the Panchayat concerned shall take action at their end within a period of four weeks from the date of receipt of a report from the Tahsildar with regard to the encroachment, as per the revenue documents.

(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 third 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 by other means.

(7) Before the removal of encroachment either under the Tamil Nadu Panchayat Act or the Land Encroachment Act



above referred to, a show cause notice shall be issued to the encroacher as well as the petitioner and further action shall be initiated in accordance with law.

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

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Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

pm

To

1. The District Collector,
Kanyakumari District,
Nagercoil.
2. The Executive Officer,
Keezhkulam Town Panchayat,
Keezhakulam Post,
Kanyakumari District.
3. The Tahsildar,
Vilavancode Taluk,
Kanyakumari District.
4. The Block Development Officer,
Keezhkulam Panchayat,
Vilavancode Taluk,
Kanyakumari District.

+1 CC to M/s.S. SIVAKUMAR, Advocate (SR-26215[F] dated 16/06/2022)

+1 CC to M/s.SPL.GP (SR-26766[F] dated 20/06/2022)

W.P(MD)No.11989 of 2022

16.06.2022

SR(CO)

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