



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.06.2022

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**THE HONOURABLE MR.JUSTICE S.S.SUNDAR
AND
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

W.P(MD)No.12438 of 2022

and

W.M.P(MD)No.8825 of 2022

Mohamed Niyas

...Petitioner

Vs.

1.The Tashildhar,
Thiruvadanai Taluk,
Ramnad District.

2.The Block Development Officer,
Thiruvadanai Panchayat Union,
Ramnad District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the order of the second respondent dated 13.06.2022 passed by his proceedings in Na.Ka.A7/859/2022 and quash the same as illegal.

For Petitioner : Mr.D.Venkatesh

For R-1 : Mr.T.Amjad Khan,
Government Advocate

For R-2 : Mr.N.Satheesh Kumar,
Additional Government Pleader

O R D E R

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

Heard Mr.D.Venkatesh, learned counsel appearing for the petitioner, Mr.T.Amjad Khan, learned Government Advocate for the first respondent and Mr.N.Satheesh Kumar, learned Additional Government Pleader for the second respondent.



2. This writ petition is filed challenging the order passed by the second respondent, dated 13.06.2022, by which the petitioner was directed to remove the encroachment.

3. Earlier, a writ petition in W.P(MD)No.2189 of 2022 was filed by one Thamimudeen for issuance of a Writ of Mandamus directing the respondents 1 to 3 to remove the encroachment made by respondents 4 to 7 therein in Survey Nos.190,191, 192, 193, 194, 195 and 279 at Marungoor Group, S.P.Pattinam, Thiruvadanai Taluk, by considering the petitioner's representations, dated 25.06.2021 and 24.01.2022.

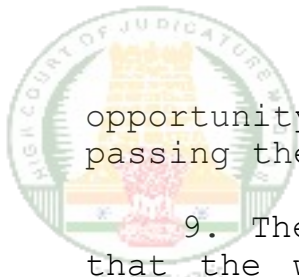
4. This Court disposed of the said writ petition vide order dated 03.02.2022 with a direction to the third respondent therein to remove the encroachment made by respondents 4 to 7 therein after issuing notice to them and affording them an opportunity of personal hearing within a period of two months from the date of receipt of a copy of the order and further directed to list the writ petition after two months. The said writ petition is also listed today for reporting compliance.

5. After disposal of the said writ petition on 03.02.2022, the respondents therein have initiated action under the provisions of the Tamil Nadu Panchayats Act, 1994. From the report received from the respondents in W.P(MD)No.2189 of 2022, it is seen that the encroachment made by respondents 4 to 7 therein, had been removed in the presence of Village Administrative Officer, Surveyor, Revenue Inspector, Deputy Tahsildar and the Sub-Inspector of Police.

6. Before proceeding with the eviction, the respondents have issued a notice to the encroachers to remove the encroachment on their own within three days. The said communication, dated 30.03.2022, also indicates that the respondents will proceed with the eviction by invoking the power under Section 131(2) of the Tamil Nadu Panchayats Act, 1905, in case the encroachment is not removed within three days.

7. The petitioner in the present writ petition in W.P(MD)No.12438 of 2022, is the fifth respondent in W.P(MD)No.2189 of 2022, who was also shown as an encroacher. However, the petitioner herein has filed the present writ petition to quash the order of the second respondent, dated 13.06.2022, by which the petitioner was directed to remove the encroachment within the time stipulated in the order.

8. It is seen that pursuant to the direction issued by this Court in W.P(MD)No.2189 of 2022, the respondents appeared to have initiated proceedings for removal of encroachment made by private respondents in W.P(MD)No.2189 of 2022. It is admitted that the survey and demarcation was conducted by the official respondents before proceeding with the eviction. However, the grievance of the



opportunity before the survey and no notice was issued to him before passing the order impugned in the writ petition.

9. The learned counsel appearing for the petitioner submitted that the writ petition in W.P(MD)No.2189 of 2022 was filed by a person, who had in fact encroached the public street. It is the further case of the petitioner that the petitioner in W.P(MD)No.2189 of 2022 has commenced the construction activities for establishing a school. Since the petitioner in W.P(MD)No.2189 of 2022, wanted to get permission and approval from statutory authorities for running a school and as the approval or regularization can be obtained only if the school has access through a 40 feet road, it is stated by the petitioner's counsel that, he filed a writ petition earlier for removal of encroachment suppressing the fact that no portion of the road is in occupation of the petitioner in W.P(MD)No.12438 of 2022.

10. Stating that the petitioner is the absolute owner in respect of the land in Survey No.291/1 (measuring 8 acres and 94 cents) in S.P.Pattinam Village, Thiruvadanai Taluk, the petitioner has come forward with the specific case that the petitioner is not in encroachment of any portion of the public road as the encroachment is not required by the petitioner who is in possession of the adjoining land and doing cultivation.

11. The main contention of the learned counsel appearing for the petitioner is that no previous notice is given to the petitioner to submit his objections, before the removal of encroachment, but it is not stated that the petitioner is not in possession of any public road or poramboke land. The learned counsel also submitted that the second respondent has no independent power under the Tamil Nadu Panchayats Act, 1994, to pass an order for removal of encroachment as the said power is vested with the revenue officials by resorting to the provisions of the Tamil Nadu Land Encroachment Act, 1905.

12. The learned counsel appearing for the petitioner further pointed out that the respondents have removed the encroachment without following the procedure prescribed under the Tamil Nadu Panchayats Act, 1905 and the action was taken in a hurried manner without following the principles of natural justice. The learned counsel further submitted that the alleged encroachment by the petitioner is a false allegation and it is only to help the petitioner in W.P(MD)No.2189 of 2021, such allegation is made. It is contended that the Officials in a biased manner reported removal of encroachment without there being any encroachment by the petitioner at any point of time.

13. The learned counsel appearing for the petitioner has admitted that he is only holding lands in Survey No.291/1 whereas the encroachment is in respect of Survey Nos.190, 191, 192, 193, 194, 195 and 279 at Marungoor Group, S.P.Pattinam, Thiruvadanai



14. However, the petitioner has not produced or relied on any verifiable material indicating that removal of encroachment pursuant to the direction of this Court, was in relation to the land in Survey No.291/1 to which he has obtained patta.

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15. Though it is stated that the respondents 1 and 2, did not conduct any survey, Mr.S.P.Maharajan, learned Special Government Pleader appearing for respondents 1 and 2 in W.P(MD)No.2189 of 2022 and Mr.N.Satheesh Kumar, learned Additional Government Pleader appearing for the second respondent in W.P(MD)No.12438 of 2022, submitted that this Court in the earlier writ petition in W.P(MD)No.2189 of 2021, has directed to remove the encroachment made by respondents 4 to 7 by following due process. It is their further case that the respondents have initiated action in accordance with the provisions of the Tamil Nadu Panchayats Act and they could secure possession through the officials who were supposed to help them in securing the possession. The respondents have asserted the observance of procedure meticulously particularly principles of natural justice.

16. It is the duty of the local body to restore the public street for the benefit of public so as to maintain the entire road portion for the benefit of public to use it. Perusal of the order passed by this Court in W.P(MD)No.2189 of 2022, shows that this Court directed to remove encroachments only from the lands which are in Survey Nos.190, 191, 192, 193, 194, 195 and 279 at Marungoor Group, S.P.Pattinam, Thiruvadanai Taluk, which is classified as a Salai and Salai poramboke. The case of the petitioner that the respondents have taken possession of the petitioner's land, is not established before this Court by any reliable materials.

17. Therefore, this Court is unable to accept the contention of the learned counsel appearing for the petitioner that the respondents have interfered with the possession in respect of his patta land while carrying out the eviction process. The records clearly indicate that the removal of encroachment is only from the street portion which vested with the local body and not in respect of any private land.

18. This Court is also able to see that the petitioner is a party in the previous writ petition in W.P(MD)No.2189 of 2022, wherein a direction was issued to the official respondents to remove the encroachment in the lands which are classified as Salai and Salai Poramboke with reference to specific survey numbers and that is now carried out. Therefore, this Court is unable to see any illegality or irregularity in carrying out the process of eviction pursuant to the direction of this Court.

19. In such circumstances, reserving a right of the petitioner to approach civil Court to file appropriate relief either under



the provisions of the Specific Relief Act or a regular suit to enforce his common law right, if he is entitled from his own land, this writ petition is dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AE)

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/07/2022

Sub Assistant Registrar(CS)

PM

To:

1.The Tashildhar,
Thiruvadanai Taluk,
Ramnad District.

2.The Block Development Officer,
Thiruvadanai Panchayat Union,
Ramnad District.

+1 CC to M/s.D. VENKATESH, Advocate (SR-27363[F] dated 22/06/2022)

+1 CC to M/s.SPL.GP (SR-27464[F] dated 22/06/2022)

ORDER MADE IN
W.P (MD) No.12438 of 2022
21.06.2022

nsn(CO)

TR(07.07.2022) 5P 5C