



WEB COPY

W.P.(MD)No.12783 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.06.2022

CORAM

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

and

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

W.P (MD)No.12783 of 2022

and

W.M.P (MD)No.9076 of 2022

K.Malaimaran

... Petitioner

Vs.

1.The Tahsildar,
Thiruppuvanam Taluk Office,
Thiruppuvanam, Sivagangai District.

2.The Block Development Officer,
Thiruppuvanam Union Office,
Thiruppuvanam, Sivagangai District.

3.The President,
Keeladi Panchayat Union, Keeladi,
Thiruppuvanam Taluk, Sivagangai District.

4.Thangaraj

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned notice in No.3/22, dated 17.06.2022 issued by the third respondent and to quash the same as illegal and consequently, to direct the respondents 1 to 3 to refrain themselves from taking any further action upon the petitioner's peaceful possession and enjoyment in the property comprised in Natham S.Nos.224/3 and 224/4 situated at Pasiyapuram Village, Keeladi Post, Thiruppuvanam Taluk, Sivagangai District till the disposal of the suit in O.S.No.340 of 2019 on the file of the Subordinate court, Manamagadurai.

For Petitioner

:Mr.T.Indrachithu

For R1 to R3

:Mr.S.P.Maharajan

Special Government Pleader

For R4

:Mr.N.Satheeshkumar

Additional Government Pleader

ORDER

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

This Writ Petition has been filed to quash the impugned notice, issued by the third respondent, dated 17.06.2022, and for a
<https://hcservices.ecourts.gov.in/hcservices/>



consequential direction to direct the respondents 1 to 3 to refrain themselves from taking any further action upon the petitioner's peaceful possession and enjoyment in the property comprised in Natham Survey Nos.224/3 and 224/4 situated at Pasiyapuram Village, Keeladi Post, Thiruppuvanam Taluk, Sivagangai District till the disposal of the suit in O.S.No.340 of 2019 on the file of the Subordinate Court, Manamadurai.

2.Heard Mr.T.Indrachithu, learned Counsel for the petitioner, Mr.N.Satheeshkumar, learned Additional Government Pleader, who takes notice on behalf of first respondent and Mr.S.P.Maharajan, learned Special Government Pleader, who accepts notice for the respondents 2 and 3.

3.It is the case of the petitioner that the petitioner has made a representation before the respondents for grant of patta in respect of the property in Natham Survey No.224/4 situated at Pasiyapuram Village, Keeladi Post, Thiruppuvanam Taluk, Sivagangai District in favour of Sri Kallimuthu Mariamman Thirukovil and thereafter, filed a Writ Petition in W.P.(MD)No.11776 of 2017 for issuance of a Writ of Mandamus to direct the third respondent to consider the said representation. This Court by order, dated 27.06.2017, gave a direction to the third respondent to consider the representation of the petitioner by providing opportunity to all the necessary parties and pass appropriate orders on merits. While passing the said order, this Court has taken note of the fact that the land in S.No.224/3 is being used as a pathway by the pilgrims and the petitioner has made representation to grant patta in respect of the land in question in favour of the temple.

4.However, by a subsequent order in a Writ Petition in W.P.(MD)No.23118 of 2017, filed by one S.Thangaraj, the Division Bench of this Court, by order dated 14.09.2021, directed the Tahsildar concerned to consider the representation of the petitioner therein, who have stated that the petitioner herein and others have encroached into certain lands in S.Nos.174/10, 24, 25, 223 and 224/1, 2 and 3. Pursuant to the direction of this Court in the two Writ Petitions, the petitioner filed another Writ Petition before this Court in W.P(MD)No.5539 of 2022 for issuance of a Writ of Mandamus directing the respondents to refrain themselves from taking any further action upon the petitioner's peaceful possession and enjoyment in respect the property comprised in S.Nos.224/3 and 224/4 situated at Pasiyapuram Village, Keeladi Post, Thiruppuvanam Taluk, Sivagangai District till the disposal of the suit in O.S.No.340 of 2019 on the file of the Subordinate Court, Manamadurai. This Court, after hearing the petitioner and the respondents, passed an order, dated 29.03.2022. Paragraph 4 of the said order reads as follows:

"4.On instructions, the learned Special Government Pleader and the learned Government Advocate appearing for



the respondents 1 and 2 would further submit that the petitioner in this writ petition has not appeared in the enquiry proceedings, which is disputed by the learned counsel appearing for the petitioner that no notice of hearing was given to the petitioner in the enquiry proceedings. The said statement is recorded. The learned Special Government Pleader and the learned Government Advocate appearing for the respondents 1 and 2 would further submit that the official respondents will strictly abide by the directions given by the Division Bench of this Court in WP(MD)No.23118 of 2017 dated 14.09.2021. The said undertaking is recorded."

5.The petitioner and other villagers have also filed a suit in O.S.No.227 of 2017 before the Subordinate Court, Sivagangai for declaration of title and consequential permanent injunction in respect of a property in S.Nos.224/3 and 224/4. It is to be noted that the petitioner, who has come forward with a request to grant patta before the Government and requested this Court to consider their representation for grant of patta in respect of the land, in respect of which they claim title in favour of temple on the basis of encroachment and has now filed the Writ Petition not to take any action till the disposal of the suit. Therefore, the intention appears to be obvious that the petitioner has encroached into the property, which is classified as street and in such circumstances, this Court does not find any *bona fide* in the present Writ Petition, wherein, the petitioner has challenged the impugned notice, in which, the petitioner was asked to remove the encroachment by keeping the statues of deities of temple in the road portion.

6.From the facts, it is seen that the petitioner has claimed title based on the classification of land. It is admitted that the temple is located in a property, which is classified as natham. The property, which is classified as natham is meant for residential purpose and it is a residential portion of a village. The particular land, which is classified as natham, may consists of plots and other portions, which may be required for the use of everyone and does not belong to any individual. Those properties, which are not in the exclusive possession of individual and which are treated as communal land, vest with the Government and therefore, the general principles that the property, which is classified as natham, does not belong to the Government, cannot be applied when it is a case that the property is part of the street or communal land, which meant for the whole community, as such. Every street vest with local body and hence, no one can claim right. Even the Government or revenue department cannot issue patta to a temple or individual in respect of any portion of street or public road.

7.Hence, the petitioner's claim of title on the basis of classification of the land does not lend support to the stand taken



by him before the Civil Court. The impugned notice clearly indicates that the petitioner has encroached into the common area. Therefore, following the judgment of Hon'ble Supreme Court earlier in **Madhavara Rao Cschindia's** case, it is made clear that even an encroacher is entitled to be heard and the petitioner should be put on notice before an order is passed under the Tamil Nadu Land Encroachment Act in case, the local body is unable to evict the encroachment.

8.It is to be noted that in the order, dated 27.06.2017 in the Writ Petition filed by the petitioner in W.P.(MD)No.11776 of 2017, this Court has recorded the stand of the petitioner that the land in S.No.224/3 is being used as a pathway by the pilgrims, who are visiting the temple. However, after admitting that the land in S.No.224/3 is used as a pathway, the petitioner's claim that the temple is entitled to get patta cannot be accepted. It is to be seen that the local body is not made as a prty to the suit.

9.Though in the earlier Writ Petitions, this Court directed the respondents to consider the representation of the petitioner, this Court is unable to find any merit in such a representation to grant patta in respect of a land, which is being used as a pathway by the public. Since it is admitted that the property in S.No.224/3 is a pathway and the petitioner and others have encroached the same by putting up the statues of deities, this Court has no hesitation to hold that the encroachment is admitted and it should be removed. The petitioner has submitted that no procedure is followed before directing the petitioner to remove the encroachment within seven days.

10.The learned Additional Government Pleader, on instructions, submitted that the encroachment was identified by the Tahsildar and thereafter, the Executive Officer/President of the Panchayat, issued the impugned order. This Court does not find any illegality in the order, as it is in accordance with Section 131(2) of the Tamil Nadu Panchayats Act, 1994. Even if the local body is unable to remove the encroachment, it is open to the local body to approach the Tahsildar, who in turn is directed to take action under the provisions of the Tamil Nadu Land Encroachment Act within a period of four weeks from the date of receipt of such representation being made by the local body.

11.It is made clear that the petitioner, who admits in the prior proceedings that the property in S.No.224/3 is a pathway is not entitled to claim patta in respect of the land either before the Government or from the revenue department. Therefore, the claim before the Civil Court in respect of S.No.224/3 is also unsustainable.



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12.With the above directions, this Writ Petition is dismissed.
No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar()

// True Copy //

/07/2022

Sub Assistant Registrar(CS)

cmr

To

1.The Tahsildar,
Thiruppuvanam Taluk Office,
Thiruppuvanam, Sivagangai District.

2.The Block Development Officer,
Thiruppuvanam Union Office,
Thiruppuvanam, Sivagangai District.

+1 CC to M/s.T. INDRACHITHU, Advocate (SR-27487[F] dated 22/06/2022

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22.06.2022

CK (CO)

KB (04.07.2022) 5P 4C