



W.P.(MD)No.17634 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.08.2022

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**
and
THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P(MD)No.17634 of 2022
and
W.M.P.(MD)No.12850 of 2022

Vasantha

... Petitioner

Vs.

- 1.The District Collector,
Ramanathapuram District, Ramanathapuram.
- 2.The Block Development Officer,
Panchayat Union, Thiruvadanai.
- 3.The Tahsildar, Thiruvadanai,
Ramanathapuram District.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari to call for the records relating to the second respondent in his proceedings in Na.Ka.No.A7/805/2022, dated 25.07.2022 directing the petitioner to remove the encroachment made in S.No.46/1 situated at Kallur Village, Thiruvadanai Taluk, Ramanathapuram District and to quash the same.

For Petitioner	:Mr.PT.S.Narendravasan
For R1 and R3	:Mr.N.Satheesh Kumar Additional Government Pleader
For R2	:Mr.T.Amjad Khan, Government Advocate



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ORDER

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

Challenging the impugned order passed by the second respondent directing to remove encroachment in exercise of his power under Section 131(2) of Tamil Nadu Panchayats Act, 1994, the present Writ Petition is filed.

2.Heard Mr.PT.S.Narendravasan, learned Counsel for the petitioner, Mr.N.Satheesh Kumar, learned Additional Government Pleader, who takes notice on behalf of respondent 1 and 3 and Mr.T.Amjad Khan, learned Government Advocate, who takes notice on behalf of the second respondent. By consent of both parties, the present Writ Petition is taken up for final disposal at admission stage.

3.The petitioner states that she is the owner of the property in S.No.46/1 measuring an extent of 1 acre 35 cents in Kallur Village, Thiruvadanai Taluk, Ramanathapuram District. It is the case of the petitioner that her father filed a suit in O.S.No.33 of 2009 on the file of the District Munsif cum Judicial Magistrate, Thiruvadanai, for declaration and the Civil Court has granted an *ex parte* decree as against the respondents 1 and 3. On the basis of the said *ex parte* decree passed as



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against the respondents 1 and 3, the petitioner states that she is the owner of the property in S.No.46/1.

4.It is admitted that one T.Kalimuthu filed a Writ Petition in W.P.(MD)No.19745 of 2017 for issuance of a Writ of Mandamus to direct the official respondents to remove the encroachments in various survey numbers including S.No.46/1 in Kallur Village. Though the petitioner is the sixth respondent in the said Writ Petition, it is admitted that the said Writ Petition is still pending. However, on the basis of the order passed in a subsequent Writ Petition in W.P.(MD)No.20927 of 2018, the Block Development Officer, has initiated proceedings under the impugned order for removal of encroachment under Section 131(2) of Tamil Nadu Panchayats Act, 1994, to evict the petitioner from the property.

5.The grievance of the petitioner is that the petitioner is not a party in the second Writ Petition. The learned Counsel for the petitioner states that the respondents have not followed the procedures, as contemplated under the Act. It is also submitted that the procedure, which was directed to be followed by the officials respondents in various judgment of Honourable Supreme Court as well as this Court, is not adhered to by the Block Development Officer before passing the impugned order.



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6.This Court has no hesitation to hold that the impugned order without issuing show cause notice is not sustainable. It is to be noted that the Block Development Officer or the local body is not a party in the suit, that was filed by the petitioner's father. Therefore, the question whether the *ex parte* decree obtained by the petitioner's father is binding on the Block Development Officer has to be considered. In case, the subject matter of the suit is a water body and vest with local body, the Block Development Officer can initiate proceedings under Section 131 of the Tamil Nadu Panchayats Act, 1994. However, in case, the Block Development Officer is not in a position to secure the possession by removing the encroachment by initiating proceedings under the Tamil Nadu Panchayats Act, the matter can be referred to the Tahsildar concerned, who is expected to take action under the provisions of the Tamil Nadu Land Encroachments Act. Hence, this Court is inclined to pass the following order:

(1)The impugned order passed by the Block Development Officer, namely, the second respondent, dated 25.07.2022 is set aside for want of prior notice, as contemplated under the statute.

(2)Since the Block Development Officer, by the impugned order, has indicated that the Tahsildar may initiate further action to remove the encroachment, this Court direct the third respondent to conduct a survey



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after issuing notice to the petitioner and the interested persons and find out the character of the land and the manner of encroachment.

(3)After confirming that the petitioner has encroached the property, that vest with the local body, it is open to the third respondent to issue a show cause notice to the petitioner as well as the interested persons, under Section 7 of the Tamil Nadu Land Encroachments Act.

(4)It is also made clear that the third respondent may pass final orders under Section 6 of the Tamil Nadu Land Encroachments Act. after hearing/considering the objection that may be filed by the petitioner to the show cause notice.

7.With the liberty above preserved to the official respondents, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.] [S.S.Y., J.]
05.08.2022

Index : Yes / No
cmr
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