



WP No.9790 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2023

CORAM

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

WP No.9790 of 2023

Fr.Francis Gamaliyel, SDB,
Correspondent,
Don Bosco Higher Secondary School,
Varadarajanpettai,
Andimadam Taluk,
Ariyalur District 621 805

... Petitioner

versus

1.The District Collector,
Ariyalur District, Ariyalur

2.The Revenue Tahsildar,
Andimadam Taluk,
Ariyalur District.

3.The Executive Officer,
Panchayat Office,
Varadarajanpettai,
Ariyalur Taluk, Ariyalur District

... Respondents

Prayer: Writ Petition under Article 226 of the Constitution of India praying for a Writ of Certiorari to call for the records relating to the proceedings dated 08.03.2023 on the file of the 3rd respondent and quash the same.



WP No.9790 of 2023

For the Petitioner : Mr.V.Illanchezian
For the Respondents : Mr.P.Muthukumar,
State Government Pleader

ORDER

(Made by the Hon'ble Acting Chief Justice)

Fr.Francis Gamaliyel, Correspondent, Don Bosco Higher Secondary School, Ariyalur District, has come to this court challenging the order dated 08.03.2023, passed by the third respondent, under Section 6 of the Tamil Nadu Land Encroachment Act, 1905, (for short, 'the Act of 1905') calling upon the petitioner to vacate and handover vacant possession of the cart-track '*vandipathai*' covered in S.No.78 by removing the compound wall put up by the petitioner.

2. Learned counsel for the petitioner would submit that the Varadarajanpet Don Bosco Society has been registered under the Societies Registration Act XXI, on 11.06.1973, on the file of the Registrar, Trichirapalli and the society is running the school and it is receiving aid from the Government. The Director of School Education, Chennai, had accorded recognition on 25.03.1969, and now the school is run by Varadarajanpet Don Bosco Society and the school is upgraded as higher secondary school.



WP No.9790 of 2023

WEB COPY

3. In an effort to prevent outsiders and miscreants from entering into the school, the school has raised the compound wall around the land. But the Executive Officer, Panchayat Office, Varadarajanpettai, has issued a show cause notice dated 10.02.2023, under Section 7 of the Act of 1905, calling upon the petitioner to show cause as to why the compound wall should not be removed, as the petitioner has encroached into the *vandipathai*. A detailed representation has been given on 27.02.2023, stating that the land is in front of the school and the petitioner has raised the compound wall in order to safeguard the interest and safety of the students, and the school is maintaining it as a green garden by planting medicinal and nursery plants. Without even considering the same, the impugned order has been passed. Learned counsel for the petitioner also would submit that when the land is situated in the village panchayat, the Executive Officer cannot issue the impugned order, exercising the power under Section 6 of the Act of 1905.

4. In similar circumstances, this court has, in its order dated 26.10.2018, in W.P.(MD) No.21920 of 2018, (K.Sasikumar vs. Executive Officer, Thenkarai Town Panchayat, held as under:

“4.A perusal of Section 131(2) of the Tamil Nadu Panchayat Act, 1994, shows that two authorities can proceed against any encroacher.



WEB COPY



WP No.9790 of 2023

Firstly, the Village Administrative Officer of every revenue village to report on encroachments on properties vested in Village Panchayat or Panchayat Union Councils to the Executive authority or the Commissioner concerned and to the officer of the revenue department. Secondly, it shall be 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 this Act and then to secure the removal of the encroachment within such time. Thirdly, if the removal of encroachment has not been secured within the period as may be specified by the Government by general or special order, the Officer of the revenue department shall institute proceedings under the Tamil Nadu Land Encroachment Act, 1905.”

5. Mr.P.Muthukumar, learned State Government Pleader, submitted that as per G.O.(Ms)No.225 dated 15.10.1996, Rural Development (CI) Department, Panchayat President is the Executive Officer, who has been authorised to remove encroachments.



WP No.9790 of 2023

WEB COPY

6. The petitioner is correspondent of a school and the school has a huge moral and legal duty to safeguard the interest of the society. Its duty extends to safeguarding waterbody, public road and cart track too. The school should not indulge in encroachment.

7. We do not find any reason to entertain the writ petition. The writ petition, therefore, fails and the same is dismissed. There will be no order as to costs. Consequently, WMP Nos.9873 and 9875 of 2023 are closed.

(T.R., ACJ.) (D.B.C., J.)
30.03.2023

Index : Yes/No
Neutral Citation : Yes/No
tar

To

1.The District Collector,
Ariyalur District, Ariyalur

2.The Revenue Tahsildar,
Andimadam Taluk, Ariyalur District.

3.The Executive Officer,
Panchayat Office, Varadarajanpettai,
Ariyalur Taluk, Ariyalur District



WEB COPY



WP No.9790 of 2023

T.RAJA, ACJ,
and
D.BHARATHA CHAKRAVARTHY, J.

(tar)

WP No.9790 of 2023

30.03.2023