



W.P.No.14863 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2023

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE P. DHANABAL

W.P.No.14863 of 2022 and

WMP No.14073 of 2022

1. G.Kalidass Goundar
2. K.Ganesh

... Petitioners

Vs.

1. The District Collector,
Chengalpattu District,
Chengalpattu 603 001.
2. The District Revenue Officer,
Chengalpattu District 603 306.
3. The Revenue Divisional Officer,
Madhuranthagam Division,
Chengalpattu District 603 306.
4. The Thasildar, Madhurandhagam Taluk,
Chengalpattu District 603 306.
5. The Sub Registrar, Sub Registrar Office,
Acharapakkam, 603 301.



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6. The Director, Chengalpattu District Town
and Country Planning Office, No.124, GST Road,
Periyar Shopping Complex, Chengalpet 603 001.

7. The Commissioner of Municipality,
No.7, Sunampedu Road, Madhurantagam,
Chengalpattu District 603 306.

8. Block Development Officer,
GST Road, Near Bus Depot and BSNL Office,
Acharapakkam, Madhurantagam,
Chengalpattu 603 306.

9. The Assistant Director,
Tamilnadu Electricity Board,
135, Car Street, Acharapakkam,
Madhurantagam 603 306.

10. V.Mohan @ Rajendiran

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents 6 to 8 to remove the unauthorised construction constructed by Mr.V.Mohan @ Rajendiran s/o Venkatesan, 10th respondent and consequently direct the 5th respondent not to mutate any records or register any alienation or any encumbrance over the schedule mentioned properties and further direct the 9th respondent not to provide electricity connection to the property constructed in the schedule mentioned property or if already provided, disconnect the electricity connection.



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For Petitioners : Mr.B.Narayanan

For Respondents : Mr.E.Vijay Anand, Addl.Govt.Pleader

for R1 to R7

Mr.C.Sangamithirai for R8

Mr.L.Jaivenkatesh for R9

Mr.M.Subramanian for R10

ORDER

(Order of the Court was delivered by D.KRISHNAKUMAR, J.)

This Writ Petition has been filed to direct the respondents 6 to 8 to remove the unauthorised construction constructed by Mr.V.Mohan @ Rajendiran s/o Venkatesan, 10th respondent and consequently direct the 5th respondent not to mutate any records or register any alienation or any encumbrance over the schedule mentioned properties and further direct the 9th respondent not to provide electricity connection to the property constructed in the schedule mentioned property or if already provided, disconnect the electricity connection.



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2. The first petitioner is father of the second petitioner and he is the absolute owner of 'A' schedule property, viz., property measuring to an extent of 1,120 sq.ft in S.No.159-1, Kadamalaiputhur Village No.109, Acharapakkam Panchayat, Chengalpattu, in which, he was taking care of cows by putting up sheds. The 'C' schedule property, viz. area around 437.50 sq.ft. in S.No.159-1 is a pathway, which has been enjoying by the petitioners and their ancestors. The tenth respondent has illegally trespassed the above said property in S.No.159-1 to an extent of 100 sq.ft., which is described as 'B' schedule property, removing the cow shed, by using JCB machine and has also constructed a building, encroaching upon the B and C schedule properties. Therefore, the petitioners have filed O.S.No.29/2021 before the District Munsif, Madhurantagam, seeking injunctions, directing the 10th respondent to stop further construction and to demolish the illegal construction put up in the B and C schedule properties and also not alienate or encumber the properties. In that suit, an order of injunction was also issued against him to stop further construction. However, the tenth respondent gave a life threat to the aunt of the second respondent. Hence the writ petition.



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3. The sixth respondent has filed a counter affidavit stating that the tenth respondent had made an unauthorized construction in survey No.159/1 and 167 of Kadamalaiputhur Village, Acharappakkam Panchayat Union. Further, they inspected the site on 10.04.2023 and found that a built up area of less than 2000 sq.ft., having ground floor of commercial shops are functioning there. Therefore, a notice under Section 56 and 57 of the Tamil Nadu Town and Country Planning Act was issued to the tenth respondent and further action is under due process of law.

4. The tenth respondent has filed a counter affidavit stating that the property measuring to an extent of 6 cents in Gramanatham survey No.167, Kadamalaiputhur Village is originally owned to one Kanniammal, grand mother of this respondent and through a family partition deed dated 19.11.1976, this property was came to his mother Muniammal, wherein, a tiled house put up therein had been allotted to her. Patta was also issued in her favour and since the tiled house had become dilapidated condition, he put up a fresh construction. The land in survey No.167/2 is a larger area and the claim of the petitioner, as if this respondent is an encroacher is a



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false one. He further undertook to remove the encroachment if any, on street promboke.

5. Heard the learned counsel for the petitioners and the learned counsel for the official respondents and also the tenth respondent. We have also perused the materials on record.

6. It is seen from the records that the tenth respondent had constructed an authorized building in the land in question in survey No.159/1 and 167 of Kadamalaiputhur Village, Acharapakkam Panchayat Union, Maduranthagam Taluk, in which, commercial shops are functioning. Further, the 6th respondent had issued a notice against the unauthorized construction made by the tenth respondent, under Section 56 and 57 of the Tamil Nadu Town and Country Planning Act and further action is also under due process of law. Further, the tenth respondent has also given undertaking that he will remove the encroachment if any, on the street promboke.



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7. Considering and recording the above submission and the statement made by the tenth respondent we inclined to pass the following order.

i)The sixth respondent is directed to proceed further, consequent to the notice issued to the tenth respondent under Section 56 and 57 of the Tamil Nadu Town and Country Planning Act, unless the tenth respondent produced any specific documents, proving that he has filed an appeal before the appellate authority.

ii) In the meantime, as per the undertaking given by the tenth respondent, the tenth respondent is directed to vacate the encroached portion in the promboke land in question, within a period of eight weeks from the date of receipt of a copy of this order.

iii) If the tenth respondent failed to vacate the encroached portion, the 8th respondent/Block Development Officer, Acharapakkam, Madurantagam is directed to take necessary action for removal of such encroachment.



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8. With the above directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

(D.K.K.J.)

(P.D.B.J.)

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Internet: Yes/No

Index : Yes/No

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