



W.P. No. 34408 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2023

CORAM

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.P. No. 34408 of 2018

&

W.M.P. No. 39982 of 2018

1. K. Periyasamy
 2. R. Jothi
- ..Petitioners

Vs.

1. The District Collector,
Villupuram District.
2. The Revenue Divisional Officer,
Kallakurichi.
3. The Tahsildar,
Kallakurichi.
4. The Block Development Officer,
Kallakurichi.
5. N. Chakrabani



W.P. No. 34408 of 2018

6. N. Samidurai

..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying

for issue of a Writ of Mandamus directing respondents 1 to 4 to remove the entire encroachment made by the 5th and 6th respondents in the water channel /Field Drainage by name "Vari" situated in Survey No.330 and running in between cultivation lands in Survey Nos. 329 and 332 of Chithallur Village, Kallakurichi Taluk, Villupuram District.

For Petitioner :: Ms.P. Meenakshi for
Mr.S. Rajendiran

For Respondents :: Mr.A. Selvendran
Special Govt. Pleader for
R1 to R4
Mr.Krishnasamy Chinnasamy for
R5 & R6

ORDER

(Made by **S. Vaidyanathan,J.**)

The present writ petition has been filed for issue of a Writ of Mandamus directing respondents 1 to 4 to remove the entire encroachment made by the 5th and 6th respondents in the water channel /Field Drainage by name "Vari" situated in Survey No.330 and running in between cultivation lands in Survey Nos. 329 and 332 of Chithallur village, Kallakurichi Taluk,



W.P. No. 34408 of 2018

Villupuram District.

WEB COPY

2. The 1st petitioner is cultivating the patta land of an extent of 5 ½ acres in Survey No. 329 and the 2nd petitioner is cultivating his patta land as well as his wife's patta land of an extent of 4.64 acres in Survey Nos. 331 and 332. The petitioners would further state that there is a Water Channel/Field Drainage by name "*Vari*" situated in Survey No.330 and running in between cultivation lands in Survey Nos. 329 (on the east) and 331 and 332 (on the west) of Chithallur Village, Kallakurichi Taluk, Villupuram District and apart from draining excess water, it serves as a passage for the farmers to bring their cattle, bullock cart carrying fertilizers and other agricultural inputs, tractors and other machineries to their agricultural field for cultivation and the said "*Vari*" is the only way for the petitioners and other farmers to reach their lands and to take home their agricultural produce. That being so, according to the petitioners, respondents 5 and 6 have encroached upon the said water channel by putting up construction thereby blocking its passage and water flow to the detriment of the farmers like the petitioners. The petitioners had given



W.P. No. 34408 of 2018

several representations to the official respondents to restore the water channel/*Vari* by removing the encroachment and the 1st respondent, by proceedings dated 12.06.2015 had directed the 3rd respondent to take appropriate action, who, in turn, had directed the 4th respondent, by proceedings dated 09.09.2015 to take suitable action for the eviction of the subject encroachment in the said water channel/*Vari*. Though notices were issued to the parties concerned, subsequently, no action was taken to remove the encroachment. According to the petitioners, even the suit filed by respondents 5 and 6 for bare injunction before the III Additional District Munsif Court, Kallakurichi regarding the encroached land in the water channel/*Vari* was dismissed after contest on 20.02.2017. However, according to the petitioners, notwithstanding the fact that further representation was given on 09.07.2018 to the 1st respondent seeking eviction of encroachment made in the water channel/*Vari*, nothing ensued. Hence, the present writ petition.

3. According to the learned counsel for the petitioners, information has been obtained under the Right to Information Act that the land comprised in S.No. 330/1 of Sithallur Village has been classified as "*Vari*"



W.P. No. 34408 of 2018

Poramboke"i.e, *Drainage channel* and that nobody has been issued with patta in respect of the aforesaid land. Further, he would submit that the suit instituted by respondents 5 and 6 as against the petitioners herein in O.S. No. 236 of 2013 before the III Additional District Munsif Court at Kallakurichi seeking permanent injunction was dismissed by judgment and decree dated 20.02.2017. Therefore, the learned counsel for the petitioners would submit that the petitioners are entitled to the relief sought.

4. On the other hand, learned counsel for respondents 5 and 6 would submit that respondents 5 and 6 are in enjoyment of the land in question to an extent of 00.1.00ares and that there is no encroachment in the property of the petitioners. It is admitted by the private respondents that the land in Survey No. 330/1 is a *Vari Poramboke*. Further, the learned counsel would submit that when the suit in O.S. No. 236 of 2013 was pending, a notice was issued by the Government, which resulted in the 5th respondent filing another suit in O.S. No. 33 of 2016 before the Principal District Munsif Court, Kallakurichi and the said suit was also decreed granting permanent injunction in respect of the suit schedule property as sought by the 5th respondent . However, he would fairly state that the dismissal of the



W.P. No. 34408 of 2018

suit in O.S. No. 236 of 2013 on 20.02.2017 was not brought to the notice of the Principal District Munsif, Kallakurichi, before the judgment and decree was passed in O.S. No. 33 of 2016.

5. Heard both parties.

6. Though it has been stated that the suit with regard to easementary right is pending, it is an admitted fact that respondents 5 and 6 have put up construction in *Vaari Poramboke*. However, there is a judgment and decree dated 30.01.2020 in favour of the 5th respondent in O.S. No. 33 of 2016, which was filed seeking permanent injunction as against 1st and 4th respondents herein and others from interfering with his peaceful possession and enjoyment of the suit property and the description of the property in respect of which permanent injunction was sought is as detailed below:

"Description of the Property

In Kallakurichi Taluk, Villupuram District, Chittalur Village Limit bearing

Survey Number: - 330/1 – 1.38 Aires in which 00.1.00 Aires and the terraced house constructed therein."

Since Survey No. 330/1 is a *Vari Poramboke* and there is a judgment



W.P. No. 34408 of 2018

and decree in favour of the 5th respondent, the Government is empowered to remove all other encroachments in Survey No.330, (including subdivisions, if any, in the said survey number), barring the property wherein injunction has been obtained by the 5th respondent and after getting necessary orders from the Appellate Court, it is open to the Government to remove other encroachments also. The said exercise of removing the encroachments on the water body shall be done within a period of four months from the date of receipt of a copy of this order, after affording an opportunity of hearing to the petitioner as well as other parties, who have encroached. No indulgence shall be shown to any encroacher much less any person, who has encroached the waterbodies, OSR, Public Roads, Parks and the like.

7. The writ petition is disposed of accordingly. No costs.
Connected W.M.P. is closed.

nv

(S.V.N.J.) (K.R.S.J.)
19.12.2023

S. VAIDYANATHAN,J.

AND



WEB COPY



W.P. No. 34408 of 2018

K. RAJASEKAR,J.

nv

To

1. The District Collector,
Villupuram District.
2. The Revenue Divisional Officer,
Kallakurichi.
3. The Tahsildar,
Kallakurichi.
4. The Block Development Officer,
Kallakurichi.

W.P. No. 34408 of 2018

19.12.2023