



W.P(MD)No.10174 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.07.2023

CORAM:

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.P(MD)No.10174 of 2011

S.Ameenal Sheik Mohammed

... Petitioner

-VS-

1. The Revenue Divisional Officer,
Sivagangai.

2. The Tahsildar,
Manamadurai.

3. A.Sonai

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order bearing No.O.Mu.A. 12/2668/2011 dated 06-07-2011 - 11-07-2011 issued by the 2nd respondent and quash the same and consequently direct the respondents to remove the encroachment in S.No.115/3 in Rajagambeeram Village, Manamadurai Taluk, Sivagangai District.

For Petitioner	: Mr.Karthick Raja
For R1 & R2	: Mr.J.K.Jayaseelan, Government Advocate
For R3	: No appearance



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ORDER

[Order of the Court was made by S.S.SUNDAR, J.]

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The prayer in the writ petition is for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order bearing No.O.Mu.A.12/2668/2011 dated 06-07-2011 - 11-07-2011 issued by the 2nd respondent and quash the same and consequently direct the respondents to remove the encroachment in S.No.115/3 in Rajagambeeram Village, Manamadurai Taluk, Sivagangai District.

2. Despite private notice being served and court notice by affixure, as the contesting respondent refused to receive notice, the 3rd respondent is not represented by any one.

3. The petitioner is a resident of the Rajagambeeram Village, Manamadurai Taluk, Sivagangai District. It is the case of the petitioner that the land in Survey No.115/3 is a poramboke land and the 3rd respondent who is the owner of the adjacent survey number, has encroached upon the said poramboke land which was chosen for



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putting up a Primary Health Centre. When the petitioner submitted a representation to the 1st respondent/Revenue Divisional Officer, Sivagangai, the 1st respondent has directed the 2nd respondent to take action if there is any encroachment. However, the 2nd respondent Tahsildar, by impugned order, has directed the Panchayat President of Rajakambeeram to pass a resolution, if there is any encroachment in the public land and then to remove the encroachment.

4. This Court finds that the Tahsildar who is competent to take action under the Tamil Nadu Land Encroachment Act, 1905, has failed to consider the representation of the petitioner properly. Therefore, the impugned order cannot stand. However, it is not the case of the petitioner that the encroachment is identified after conducting a survey in her presence. In the said circumstances, this Court is inclined to pass the following order:-

The impugned order passed by the 2nd respondent Tahsildar dated 06.07.2011 is set aside. The 2nd respondent is directed to conduct a survey after issuing notice to the petitioner and the 3rd respondent and in their presence and identify/demarcate any



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encroachment in a Government poramboke land in question or in a land which vested with the local body. In case, the encroachment is found, it is open to the 2nd respondent to initiate action following procedure prescribed under the Tamil Nadu Land Encroachment Act, 1905. Such proceedings towards eviction of encroachment shall be commenced and completed within a period of three months from the date of receipt of a copy of this order in case of encroachment. After conducting survey, the Tahsildar shall draw a report indicating the outcome of survey and serve a copy thereof to the petitioner as well as the 3rd respondent.

5. The Writ Petition is allowed accordingly. No costs.

[S.S.S.R, J.] [D.B.C., J.]
18.07.2023

Index : Yes / No
Neutral Citation : Yes / No
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