



WEB COPY

W.P.(MD) No.11643 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.10.2023

CORAM:

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN**

W.P.(MD) No.11643 of 2012

and

M.P.(MD) No.1 of 2012

D.Selvi

... Petitioner

-vs-

- 1.The District Collector
Kanyakumari District
Nagercoil
- 2.The Tahsildar
Kalkulam Taluk
Padmanabhapuram
Thuckalay Post
Kanyakumari District
- 3.The Director
Town and Country Planning Authority
Chennai-600 001
- 4.The Assistant Director
Town and Country Planning Authority
Palayamkottai, Tirunelveli



W.P.(MD) No.11643 of 2012

WEB COPY

5.The Executive Officer
Kulasekharam Town Panchayat
Kanyakumari District

6.S.B.J.Vidya Bhavan International School
rep.by its Correspondent
Sydneyson Morris
Peace Garden, Arasumoodu
Kulasekharam 629 161
Kanyakumari District

7.Evanjaline Nesa Kumari
W/o.Sydneyson Marris
Principal
S.B.J.Vidya Bhavan International School
Peace Garden, Arasumoodu
Kulasekharam Post
Kanyakumari District

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of mandamus directing the respondents 1 to 5 immediately to remove the unauthorized construction encroaching the public pathway by the respondents 6 and 7.

For Petitioner : Mr.G.Cenil

For Respondents : Mr.S.P.Maharajan
Special Government Pleader for R1 to R5
Mr.S.Ragatheesh Kumar
for M/s.Isaac Chambers for R6 & R7



WEB COPY



W.P.(MD) No.11643 of 2012

ORDER

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

The relief sought for in the present writ petition is to direct the respondents 1 to 5 to remove the unauthorized construction made by the respondents 6 and 7 in the subject land encroaching the public pathway.

2. The petitioner states that the subject land is classified as Street in the revenue records and the respondents 6 and 7 have encroached the said land. Therefore, the petitioner has made a representation to the authorities, seeking removal of the same. Since the said representation has not been considered so far, the petitioner is constrained to move the present writ petition.

3. The issue regarding the removal of encroachment has been decided by this Court *vide* order dated 12.10.2023 in W.P.(MD)No.24679 of 2023 and the relevant paragraphs are extracted hereunder:-

“4.The Government originally issued G.O.(Ms)No. 540, Revenue [LD6(2)] Department, dated 04.12.2014 and formed committees to dispose of the grievances relating to the eviction of encroachment in Government lands. The



WEB COPY

W.P.(MD) No.11643 of 2012

said Government Order was issued pursuant to the order of the High Court of Madras in W.P.No.26722 of 2013 dated 08.10.2014. Subsequently, the Division Bench of Madras High Court at Madurai Bench in W.P.(MD)No. 15917 of 2015, dated 02.09.2015 passed an order. Superseding earlier Government Order issued in G.O. (Ms)No.540, recently, the Government issued G.O.(Ms)No. 64, Revenue and Disaster Management Department, Land Disposal Wing, 'LD.6(2)' Section, dated 08.02.2022. Monitoring Committees are constituted. The Divisional Monitoring Committee has been constituted appointing Revenue Divisional Officer concerned as Chairperson / Convenor along with members. The District Monitoring Committee has been constituted appointing District Collector concerned as Chairperson along with members. The State Steering Committee is constituted headed by the Chief Secretary to Government along with members from various departments including Police and Highways Department. The Committee will convene once in a month and the issues will be taken up for discussion along with all Secretaries Meeting. The Committees constituted by the Government are expected to act in a meaningful manner, so as to redress the grievance of the aggrieved persons sending representations to remove the encroachments from Highways, water bodies and Government Poramboke lands etc.



WEB COPY

W.P.(MD) No.11643 of 2012

5. Writ petitions filed challenging the show cause notices are not entertainable, unless such show cause notices have been issued by an incompetent authority having no jurisdiction or tainted with the allegation of mala fides. Persons, receiving show cause notices regarding removal of encroachments, are at liberty to submit their objections / explanations along with the documents, if any, enabling the competent authority to decide the issues on merits and in accordance with law and proceed thereafter.

6. If any person is aggrieved by the final order passed under the relevant statute, he may prefer an appeal before Appellate Authority under the Act. The appeal remedy contemplated under the enactment, at no circumstances, be undermined. Such appeal remedy is contemplated by the legislators in order to verify the correctness of the orders passed by the original authority. Thus, the Rule is to exhaust the alternate appeal remedy before approaching the Court of law and dispensing with the appeal remedy / statutory remedy is an exception. By entertaining Writ Petitions before exhausting the alternative appeal remedy / statutory remedy, the right of appeal of the aggrieved person is denied, more so, the rights of the other parties is also prejudiced. Thus, the importance of exhausting the alternative appeal remedy, at no circumstances, be neutralized or compromised. Even in



W.P.(MD) No.11643 of 2012

WEB COPY

respect of the grounds relating to violation of principles of natural justice, the statutory authorities are empowered to adjudicate such legal grounds, since they are exercising quasi-judicial powers under the Act. Thus, on receipt of the show cause notice under the relevant Act relating to removal of encroachments in Government lands and water bodies, the person, who has received the same, must be relegated to approach the authority concerned and submit his explanation / defence along with the documents, if any.

7.Earth provides everything for human life, but not to satisfy the greed. Greedy men are encroaching upon the Government lands, water bodies and Highways lands, thereby causing infringement of the basic rights of other fellow citizens, who are all entitled to use public lands. In such circumstances, it is the constitutional duty of the State to ensure that public properties, water bodies and Government Poramboke lands are protected for the benefit of people at large and to provide infrastructural facilities to the public in general. In the event of large scale encroachments, it will result in an anomalous situation, wherein the greedy men will take undue advantage and by creating bogus and fraudulent documents, claim title over the Government properties and secure patta.



WEB COPY

W.P.(MD) No.11643 of 2012

8.Few greedy revenue authorities are granting patta by indulging in corrupt practices and such pattas are utilized for the purpose of claiming title over the Government properties. Through Schematic and systematic way of fraudulent documents are created by the encroachers for the purpose of grabbing larger extent of Government lands across the State of Tamil Nadu. Due to sky rocketing of the market value of the lands in recent years, greedy men are tempted to encroach upon the Government lands with the collusion of the officials of the revenue and other Government departments. The officials from the revenue departments, who have knowledge about the Government lands are paving way for encroachments and by connivance granting patta to such encroachers by manipulating revenue records. All such activities are to be thwarted and the Government properties are to be protected for the benefit of the people at large and it is the duty mandated on the State.

9.The Committees constituted in G.O.(Ms).No.64, have to conduct roving enquiry for the purpose of identifying encroachments in their respective divisions, districts and at the state level and initiate all appropriate actions to evict the encroachers and protect the Government lands, water bodies etc.



WEB COPY

W.P.(MD) No.11643 of 2012

10. Grabbing Government land is an offence. Criminal prosecutions are to be initiated against the encroachers. Frequent Writ Petitions are filed and in some cases, even after the removal of encroachments, again same public properties are encroached upon by the persons and such re-encroachment, if permitted, would result in further complications. Therefore, once the encroachment is identified by conducting survey and show cause notice has been issued to the encroachers, asking them to vacate the land or premises, final order to be passed, which is to be executed without causing undue delay. In addition, the authorities competent are bound to institute criminal prosecution against the offenders. Grabbing Government land is a theft. Therefore, it is an offence not only under Indian Penal Code but under other statutes. Serious actions warranted against the encroachment of Government land, water bodies etc. Common citizen are suffering on account of the illegal activities of the land grabbing by few influential persons in the society.

11. Right to Property is a Constitutional Right under Article 300 A of Constitution of India. The State is duty bound to protect the right of the citizens. Thus, actions against the land grabbers are of paramount importance and the Committees constituted in G.O.Ms.No.



WEB COPY

W.P.(MD) No.11643 of 2012

64, are expected to act swiftly, so as to remove the encroachments on receipt of complaint or knowledge about any such encroachment of Government land, water bodies etc.

12.Considering the fact that numerous Writ Petitions are filed before the High Court to remove the encroachments and taking note of the fact that the Government also issued an order in G.O.Ms.No.64, appointing the Divisional Monitoring Committee, District Monitoring Committee and State Steering Committee, we are inclined to pass the following order:-

“1.The representations submitted by the writ petitioner is directed to be looked into by the Highways Authority under Section 28 of the Tamil Nadu State Highways Act, 2001 and all appropriate actions are directed to be initiated to remove the encroachments in the Highways by following the procedures as contemplated;

2.The respective Divisional Monitoring Committees, District Monitoring Committees, State Steering Committee, on receipt of any complaint or information from any person regarding encroachment of Government land, water bodies etc., are directed to initiate all appropriate actions to remove the encroachments within a period of twelve



WEB COPY

W.P.(MD) No.11643 of 2012

weeks from the date of receipt of the complaints / representations / informations and register criminal complaints, wherever required;

3.The representations submitted to any Government official / authority in their individual designation or otherwise are directed to be forwarded by such Government official / authority to the Divisional Monitoring Committee, District Monitoring Committee or State Steering Committee as the case may be and the Committee concerned in turn, on receipt of any such informations / representations / complaints from any other authority of any department, are directed to look into the issues for initiation of further actions to evict the encroachers by following the procedures as contemplated under the Act;

4.The representations / complaints / informations cannot be rejected merely on the ground that it has been addressed to a wrong authority or incompetent authority. All such authorities are directed to forward the complaints to the competent authority ie., Divisional Monitoring Committee, District Monitoring Committee and State Steering Committee for the purpose of initiation of actions.



WEB COPY



W.P.(MD) No.11643 of 2012

5.The State Steering Committee as per the Government Order will convene once in a month without any lapse and issues are directed to be taken up for discussion along with Secretaries meeting.

6.The complaints received, action taken and the results are to be monitored by the State Steering Committee and all such details are directed to be uploaded in the Revenue Department Website / Tamil Nadu Government Website, enabling the citizens to know about the status of their complaints / representations or information regarding the encroachments of Government lands, public properties, water bodies etc.

7.It is clarified that any authority, on receipt of complaints / representations / information regarding the encroachment, shall forward the same to the Divisional Monitoring Committee / District Monitoring Committee / State Steering Committee, who in turn, is directed to issue appropriate directions to the designated / competent authority under the relevant statutes and rules to initiate all appropriate actions to evict the encroachers by duly following the procedures as contemplated and pass orders, remove encroachments and communicate the same to the Divisional Monitoring Committee /



WEB COPY



W.P.(MD) No.11643 of 2012

District Monitoring Committee / State Steering Committee and thereafter, communicate the action taken information to the complainant / informant or the persons submitting representations.

8.The Committees constituted under G.O. (Ms)No.64, dated 08.02.2022 are not competent authority under the relevant statutes and rules. Therefore, the Committees are empowered to monitor actions to be initiated by the competent / appropriate authority under the relevant provisions of the Acts and rules.

9.In the event of negligence, lapses or dereliction of duty on the part of the competent authority under the statutes or any department in removing the encroachments and to protect the Government properties, then the Divisional Monitoring Committees / District Monitoring Committees / State Steering Committee are directed to recommend for initiation of appropriate disciplinary action against the concerned authorities, who have committed such misconduct under the Service Rules.

10.In the event of failure to initiate action to remove encroachments within a period of twelve (12) weeks on the part of the authorities / committees



WEB COPY

W.P.(MD) No.11643 of 2012

with reference to the Government Order issued in G.O.Ms.No.64, thereafter, the aggrieved person is at liberty to approach the High Court for appropriate relief.”

4. In terms of the order passed in the above writ petition, this writ petition stands disposed of. The official respondents are directed to initiate all appropriate actions in the manner known to law. No costs. Consequently, connected miscellaneous petition is closed.

[S.M.S., J.]

[V.L.N., J.]

30.10.2023

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

krk



W.P.(MD) No.11643 of 2012

WEB COPY

To:

- 1.The District Collector,
Kanyakumari District,
Nagercoil.
- 2.The Tahsildar,
Kalkulam Taluk,
Padmanabhapuram,
Thuckalay Post,
Kanyakumari District.
- 3.The Director,
Town and Country Planning Authority,
Chennai-600 001.
- 4.The Assistant Director,
Town and Country Planning Authority,
Palayamkottai, Tirunelveli.
- 5.The Executive Officer,
Kulasekharam Town Panchayat,
Kanyakumari District.



WEB COPY



W.P.(MD) No.11643 of 2012

S.M.SUBRAMANIAM, J.
and
V.LAKSHMINARAYANAN, J.

krk

W.P.(MD) No.11643 of 2012
and
M.P.(MD) No.1 of 2012



WEB COPY



W.P.(MD) No.11643 of 2012

30.10.2023