



W.P.(MD)No.5949 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MRS. JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.5949 of 2023

and

W.M.P(MD)No.5533 of 2023

A.R.Ramasamy

: Petitioner

Vs.

1.The District Collector,
O/o District Collectorate,
Sivagangai.

2.The Thasildhar,
Karaikudi Taluk,
Sivagangai District.

3.The Zonal Deputy Thasildar,
Karaikudi Taluk,
Sivagangai District.

: Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorari to call for the records pertaining



W.P.(MD)No.5949 of 2023

WEB COPY to the impugned eviction notice dated 03.03.2023 on the file of the respondent No.3 and quash the same.

For Petitioner : Mr.T.Lajapathy Roy
Senior Counsel for
M/s Lajapathy Roy and Associates

For Respondent : Mr.V.Nirmalkumar
Govt. Advocate

ORDER

(Order of the Court was made by R.SUBRAMANIAN, J)

Challenge is to the show cause notice issued under Section 7 of the Tamil Nadu Land Encroachment Act, 1905 dated 03.03.2023. In and by the said notice, the third respondent/Zonal Deputy Thasildar, Karaikudi had required the petitioner to show cause why the encroachments made by him in S.Nos.151 and 152 of Amaravathi Pudhur Village should not be removed, since the said land has been classified as channel.



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WEB COPY

2.Mr.T.Lajapathy Roy, learned Senior Counsel appearing for the petitioner would submit that the petitioner has launched a civil suit in O.S.No.70 of 2016 seeking a decree for declaration of title to the property and for consequential injunction restraining the defendant from causing any disturbance to his peaceful possession and enjoyment against the District Collector, Sivagangai and other revenue officials. The suit property in the said suit is comprised in S.Nos.149, 150, 151 and 152, measuring an extent of 5 Acres 55 Cents, in Amaravathi Pudhur Village. Though the said suit was initially dismissed and the dismissal was confirmed in appeal, as against the said Judgment and Decree of the Appellate Court, second appeal in SA(MD)No.481 of 2020 is pending. In CMP(MD)No.5486 of 2020, this Court had directed the parties to maintain *status quo*. Therefore, according to the learned Senior Counsel, the Government being a party to the civil litigation has to await the result of the civil litigation and it cannot launch the proceedings under the Land Encroachment Act against the *status quo* order that has been granted by this Court.



W.P.(MD)No.5949 of 2023

WEB COPY

3.Mr.V.Nirmalkumar, learned Government Advocate appearing for the respondents would however, submit that one Rakkappan, who is a third party, had filed a writ petition seeking a Mandamus directing removal of encroachments made by the petitioner. The petitioner was arrayed as 4th respondent in the said writ petition in W.P(MD)No.12892 of 2018 and a Division Bench of this Court had directed the authorities to take appropriate proceedings for eviction.

4.We find this practice prevailing particularly in this part of the State where the civil Courts' decrees and orders are suppressed and orders are obtained under the writ jurisdiction. This is a undesiarable trend. Invariably, the pendency or otherwise of the civil litigation and the orders passed therein are not disclosed in the writ proceedings. Often persons, who are parties to the civil litigation, invoke the writ jurisdiction suppressing the civil litigation. This cannot continue forever. If we come across such cases in future, we will be constrained to impose heavy costs. There is an order of *status quo* granted by the learned single Judge on the civil side and there is a direction to remove the encroachment on the writ



W.P.(MD)No.5949 of 2023

side. It is a very unfortunate situation. However, in view of the fact that the Government is a party to the civil litigation and the *status quo* order has been granted by this Court in the second appeal, the said order will acquire the precedence over the direction issued by the Division Bench for removal of the encroachment. Hence, the impugned notice is set aside. It will open to the Government to proceed further in accordance with the decision of the Civil Court.

5.This writ petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

[R.S.M., J.] & [L.V.G., J.]
20.03.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
skn



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