



W.P(MD)No.9208 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 08.09.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.9208 of 2015
and
M.P.(MD)No.2 of 2015

T.Tharmaraj

... Petitioner

Vs.

- 1.The District Collector,
Tirunelveli District.
- 2.The Block Developments Officer,
Melaneelatha Nallur,
Tirunelveli District.
- 3.The Tahsildar,
Sankarankovil Taluk,
Tirunelvelli District.
- 4.The President,
Kulasekaramangalam Panchayat,
Sankarankovil Taluk,
Tirunelvelli District.
- 5.The Sub Inspector of Police,
Sernthamaram Police Station,
Sankarankovil Taluk,
Tirunelvelli District.



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6.P.Britto

... Respondents

*(R6 is impleaded vide order dated
21.11.2017 in M.P.(MD)No.3 of 2015 in
W.P.(MD)No.9208 f 2015)*

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling the records pertaining to the impugned proceedings by the 4th respondents dated 05.06.2015 and quash the same as illegal and arbitrary.

For Petitioner : Mr.R.M.Mathavaselvam,
For Mr.T.R.Jeyapalam

For Respondents : Mr.S.RA.Ramachandran,
Addl. Government Pleader for R1 to R5.
Mr.D.Selvanayagam for R6.

ORDER

Heard the learned counsel on either side.

2.The petitioner challenges the impugned notice issued by the President of the local body calling upon the petitioner to remove the encroachment said to have been committed in S.No.635/19 in Thannoothu Village. According to the third respondent, it is a pathway and that therefore, no encroachment can be permitted.

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3.The petitioner challenges the said communication primarily on the ground that the local body is not competent to cause removal.

4.This issue has already decided by the Madras High Court.

Section 131 of Tamil Nadu Panchayats Act, 1994 is as follows:-

“131. Prohibition against obstructions in or over public roads, etc.- (1) No person shall, except as permitted by Rules made under this Act and except in accordance with the conditions imposed by any licence made requisite by such Rules-

(a) build any wall or erect any fence or other obstruction or projection or make any encroachment whatsoever; whether permanent or temporary, 1[in or over any public road or any property vested in or belonging to or regulated or owned by, a Village Panchayat or Panchayat Union Council];

(b) make any hole or deposit any matter 1 [in or over any public road or any property vested in or belonging to or regulated or owned by, a Village Panchayat or Panchayat Union Council];

(c) work a quarry in or remove stone, earth or other material from any place within twenty metres of a public road or of other immovable property vesting in or belonging to a



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Village Panchayat or Panchayat Union Council, provided that nothing in this clause shall be deemed to apply to any work which, in the opinion of the Inspector, is done in connection with a bonafide agricultural operation;

(d) erect any building over any drain or any part thereof;

(e) plant any tree on any public road or other property vesting in or belonging to a Village Panchayat or a Panchayat Union Council: or

(f) fell, remove, destroy, lop or strip bark, leaves, or fruits from, or otherwise damage, any tree which is growing on any such public road or other property or on any poramboke land, the use of which is regulated by a Village Panchayat under Section 134 or Section 135 and the right to which has not been established by such person as vesting in or belonging to him.

(2) It shall be the duty of the Village Administrative Officer of every revenue village to report on encroachments on properties vested in Village Panchayats or Panchayat Union Councils to the Executive Authority or the Commissioner concerned and to the officer of the Revenue Department, and [it shall be the duty of the Executive Authority or the Commissioner concerned either suo motto or on obtaining a report from the Village 69 Administrative Officer in this regard to institute proceedings under this Act] and secure the removal of the encroachments within such time as may be specified by the Government by general or special



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order. If the removal of the encroachments has not been secured within the period specified in such order, the officers of the Revenue Department shall institute proceedings under the Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act III of 1905) and secure such removal.”

In a recent decision, the Hon'ble Division Bench of this Court to which I was a party had held that the President of the local body in his capacity as executive authority can very well issue notice for removal of encroachment under Section 131 of the Act but the physical removal can be done only by the jurisdictional Tahsildar by following the provision of the Tamil Nadu Land Encroachment Act, 1905.

5.The learned counsel for the sixth respondent draws my attention to the order dated 08.04.2019 made in W.P.(MD)No.6774 of 2015. The said writ petition was filed by the sixth respondent. When the writ petition was taken up for hearing, it was submitted by the Government that S.No.635/19 has been classified as pathway in the revenue record. I have already held that patta cannot be issued in respect of a pathway.



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6.The learned counsel for the petitioner relies on certain civil proceedings. He points out that one Backiyasamy represented by the sixth respondent filed a suit in O.S.No.94 of 2009 on the file of the Principal District Munsif Court, Sankarankovil and that it was decreed as prayed for and that it was reversed in A.S.No.8 of 2011 on the file of the Sub Court, Sankarankovil. Neither the local body nor the State of Tamilnadu was impleaded as a party defendant. Therefore, the said decree obtained in the civil proceedings cannot have any binding effect over the official respondents. I sustain the impugned notice but further action can be taken only in the manner known to law.

7.This writ petition is dismissed with the aforesaid observations, No costs. Consequently, connected miscellaneous petition is closed.

08.09.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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Issue order copy on 03.01.2024.



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G.R.SWAMINATHAN, J.

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