



W.P.(MD) Nos.22351 to 22354 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.09.2023

CORAM:

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and**

**THE HONOURABLE MR.JUSTICE D.BHARATHA
CHAKRAVARTHY**

W.P.(MD) Nos.22351 to 22354 of 2023

and

W.M.P.(MD) Nos.18628, 18631, 18632 & 18630 of 2023

Rajesh	: Petitioner in W.P.(MD)No.
22351/2023	
Visalatchi	: Petitioner in W.P.(MD)No.
22352/2023	
Marimuthu	: Petitioner in W.P.(MD)No.
22353/2023	
Manokar	: Petitioner in W.P.(MD)No.
22354/2023	

-vs-

1.The Commissioner,



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Panchayat Union,
Krishnarayapuram,
Kadavur Taluk,
Karur District.

2.The Tahsildar,
Kadavur Taluk,
Karur District.

: Respondent in all Writ

Petitions

*[R2 is suo motu impleaded by this Court vide order dated
14.09.2023]*

COMMON PRAYER: Petitions filed under Article 226 of the Constitution of India, to issue a Writs of Certiorari, calling for the records of the respondent pertaining to the notice issued in Na.Ka.No.A3/3465/2023 dated 21.08.2023 and quash the same as arbitrary, illegal.

For Petitioner : Mr.M.Karunanithi

For Respondent : Mr.M.Lingadurai



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Special Government Pleader
[In all Writ Petitions]

COMMON ORDER

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

Mr.M.Lingadurai, learned Special Government Pleader accepts notice on behalf of the respondent.

2.With the consent of both sides, these writ petitions are taken up for final hearing at the admission stage itself.

3.All these writ petitions are filed challenging the order of the respondent, directing the writ petitioners to remove the encroachments by putting up constructions in the property in S.Nos.99/1 & 99/2 in Chenkulam, Mathagiri Village & Post, Kadavur Taluk, Karur District.

4.The case of the petitioners in all these cases is that the



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property in S.Nos.99/1 and 99/2 [previously it was S.No.100/2D1 & 100/2-I1] are the properties, in which the respective petitioners were in enjoyment by putting up small shops. The petitioners are also residing in the same place. Referring to the fact that they have been paying property tax, electricity charges etc., it is the case of the petitioners that they are in lawful possession and their possession is in exercise of their Right of Ownership.

5.It is stated by the petitioners that at the instance of some third persons, the respondent has started threatening the petitioners to vacate their houses and hence one of the petitioners was constrained to file a writ petition before this Court in W.P. (MD)No.19474 of 2023, praying for a Writ of Mandamus directing not to dispossess the petitioner therein, without following due process of law. The writ petition was also allowed with a direction to the respondents therein to follow the provisions contained in the Tamil Nadu Land Encroachments Act, 1905.



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6.Despite the observation of this Court that the property is classified as “Vandi Pathai Poramboke” and that the respondent has no jurisdiction to remove encroachment, it is brought to the notice of this Court that the respondent has passed an order under section 131(2) of the Tamil Nadu Panchayat Act, 1994 [hereinafter referred to as 'the Act'].

7.The question is about the jurisdiction of the respondent to initiate action under Section 131(2) of the Act. Though the Commissioner or the Executive Authority of the Panchayat has power to initiate proceedings under Section 131(2) and secure removal of encroachments within such time as may be specified by the Government by a general or special order, this Court has entertained doubt as to the jurisdiction of the Commissioner of Panchayat to initiate action without there being a general or special order. Though the provisions of Section 131(2) could be interpreted to the effect that the Executive Authority or the Commissioner of Panchayats can institute proceedings to



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remove encroachment and the Government Order is only to specify the time within which the encroachment should be removed, this Court is unable to apply the provisions of Section 131(2) of the Act, as the character of land as seen from the earlier proceedings is a “Vandi Pathai” [cart track] in a Ryotwari land. Section 131(2) of the Act mandates the Village Administrative Officer of the Village to report of encroachments on properties vested in village panchayats or panchayat union to the Executive Officer or the Commissioner. The Act also says that the power is available to the Officer of the Revenue Department.

8. Having regard to the fact that the Act empowers the revenue officials to initiate proceedings under the Act, irrespective of the classification of the land, this Court finds it safe to direct the Revenue officials to proceed further. This Court has also held in one of the writ petitions filed by the petitioner that the revenue officials shall follow the procedures in accordance with the provisions of the Tamil Nadu Land Encroachment Act, 1905,



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before eviction. Hence, it would be appropriate to direct the revenue officials to proceed to remove the encroachments, if any.

9. Having regard to the conclusion arrived at, this Court is inclined to set aside the order impugned in these writ petitions, on the ground that it is desirable and effective to direct the Tahsildar concerned to initiate proper action.

10. It is seen that the Tahsildar, Kadavur Taluk, Karur District, is not a party in this Writ Petition. Since this Court has found that the encroachment in the Government property should be removed by the revenue officials in terms of Land Encroachment Act, the Thasildar, Kadavur Taluk, Karur District is *suo motu* impleaded as the second respondent in these writ petitions.

11. In view of the conclusion reached above, the second respondent is directed to initiate proceedings under the Land Encroachments Act, 1905, after conducting a survey in the



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presence of the petitioners. The second respondent shall proceed further in accordance with law, if any encroachment is identified at the time of survey. A copy of the report of the survey shall also be furnished by the second respondent to the petitioners before proceeding further. In case any encroachment is identified, the second respondent shall initiate proceedings and complete the process of eviction within a period of eight [8] weeks from the date of serving a copy of the survey report to the petitioners.

12.Accordingly, these Writ Petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

[S.S.S.R., J.]

[D.B.C., J.]

14.09.2023

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

MR



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To

1.The Commissioner,
Panchayat Union,
Krishnarayapuram,
Kadavur Taluk,
Karur District.

2.The Tahsildar,
Kadavur Taluk,
Karur District.

S.S.SUNDAR, J.
and
D.BHARATHA CHAKRAVARTHY, J.

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