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W.P(MD)No.28544 of 2022
and
Cont.P(MD)No.685 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.03.2023

CORAM:

**THE HONOURABLE MR.JUSTICE D. KRISHNAKUMAR
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

**W.P(MD)No.28544 of 2022
&
W.M.P(MD)Nos.22544 & 22546 of 2022 & 23271 of 2022
and
Cont.P(MD)No.685 of 2018
&
Sub.Applc(MD)No.182 of 2022**

W.P(MD)No.28544 of 2022:-

K.Alagarsamy

... Petitioner

vs.

- 1.The District Collector,
Office of the Collectorate,
Virudhunagar,
Virudhunagar District.
- 2.The District Revenue Officer,
Office of the District Revenue Officer,
Collectorate Complex,
Virudhunagar.
- 3.The Revenue Divisional Officer,
Office of the Revenue Divisional Officer,
Aruppukottai, Virudhunagar.

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4.The Tahsildar,
Office of the Tahsildar,
Kariyapatti,
Virudhunagar.

5.Kandasamy

6.The Assistant Director of Town and Country Planning,
Virudhunagar. ... Respondents

(R – 5 impleaded vide order dated 23.02.2023
in W.M.P(MD)No.2623 of 2023)

(R – 6 *suo motu* impleaded vide order dated 01.03.2023
in W.P(MD)No.28544 of 2022)

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records pertaining to the impugned order of the fourth respondent an order in Na.Ka.A8/4858/2015, dated 02.12.2022 and quash the same.

For Petitioner	: Mr.S.Ramsundarvijayraj
For RR 1 to 4	: Mr.K.Balasubramani Special Government Pleader
For R – 5	: Mr.R.Udhayakumar



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Cont.P(MD)No.685 of 2018:-

Kandasamy

... Petitioner/Petitioner

vs.

Muthukrishnan,
The Tahsildar,
Kariyapatti Taluk,
Virudhunagar District.

... Contemnor/2nd Respondent

PRAYER : Contempt Petition filed under Section 11 of Contempt of Courts Act, 1971, to punish the contemnor / 2nd respondent for the deliberate and wilful disobedience of the order passed by this Court dated 26.02.2018 made in W.P(MD)No.3930 of 2018.

For Petitioner : Mr.R.Udhayakumar

For Respondent : Mr.K.Balasubramani
Special Government Pleader

COMMON ORDER

(Order of the Court was made by D. KRISHNAKUMAR, J.)

W.P(MD)No.28544 of 2022 is filed by the petitioner, to quash the impugned notice issued by the fourth respondent under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, in Na.Ka.A8/4858/2015, dated



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02.12.2022, pursuant to the order passed by this Court in Cont.P(MD)No. 685 of 2018 in W.P(MD)No.3930 of 2018, dated 30.11.2022.

2. According to the petitioner, he is the Secretary of the Arulmighu Sree Seelaikariamman Kovil Annadhanam Seithu Vazhipadupavarkal Sangam. The property comprised in Survey Nos.43/12 and 43/13 was originally classified as a 'Kaliyidam and Kalimanai', which is a vacant land and patta was granted in favour of one Muniyandi and subsequently, after the death of the said Muniyandi, the said land has been classified as 'Kaliyidam and Kalimanai'. The said land was utilized for the Temple functions and other occasions and patta has been granted in favour of the then Trustee of the Temple, namely, U.Gurusamy. During rainy seasons, the said land is not feasible for conducting the festival and worshipping the Temple, therefore, funds have been collected from the public and constructed a marriage hall for the purpose of conducting the festivals as well as the marriage.

3. While being so, one Kandasamy, has encroached upon a portion of the pathway and constructed a house in Survey No.17/12, which



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is classified as a 'street'. Aggrieved over the same, one A.Mahalingam filed a Writ Petition before this Court in W.P(MD)No.6040 of 2016, seeking for removal of encroachment made by the said Kandasamy and this Court, by order, dated 30.08.2017, directed the authority concerned to remove the encroachment, after issuing notice to the concerned parties and following the statutory procedure. Challenging the notice issued under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, the said Kandasamy filed a Writ Petition in W.P(MD)No.11 of 2018 before this Court and this Court, by order, dated 03.01.2018, dismissed the Writ Petition. Due to personal enmity, the said Kandasamy filed a Writ Petition in W.P(MD)No.3930 of 2018, to remove the encroachment in Vetrilaimurianpatti Village streets and this Court, by order, dated 26.02.2018, disposed of the Writ Petition to remove the encroachment. Pursuant to the said order, dated 26.02.2018, the second respondent, vide proceedings dated 08.03.2018, directed the said Gurusamy to remove the encroachment in the Temple. The said Gurusamy, also filed a Writ Petition in W.P(MD)No.10146 of 2018, to quash the impugned order, dated 17.04.2018 issued by the fourth respondent therein and this Court, by order dated 08.06.2018, dismissed the Writ Petition as withdrawn, since the encroachment was removed.



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4.Since the petitioner's Sangam has been in possession and doing the activities of marriage and other functions in Survey Nos.43/12 and 43/13, which is a vacant land/Kaliyidam, the petitioner's Sangam made a representation to the official respondents to issue patta in favour of the said Sangam. Pending consideration, the petitioner filed a Writ Petition in W.P(MD)No.14887 of 2021, directing the first respondent therein to dispose of the representation of the petitioner's Sangam, dated 20.06.2021 to issue patta in favour of the Temple and this Court, by order, dated 27.08.2021, disposed of the Writ Petition. Pursuant to the said order, dated 27.08.2021, the fourth respondent has recommended to issue patta to the petitioner. While being so, the fourth respondent issued the impugned notice, dated 02.12.2022 under Section 7 of the Tamil Nadu Land Encroachment Act, pursuant to the order passed by this Court in Cont.P(MD)No.685 of 2018 in W.P(MD)No.3930 of 2018, dated 30.11.2022 Challenging the same, the petitioner has filed the present W.P(MD)No.28544 of 2022.



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5.Cont.P(MD)No.658 of 2018 is filed by the petitioner, alleging non compliance of the order passed by this Court in W.P(MD)No.3930 of 2018, dated 26.02.2018.

6.The learned counsel appearing for the writ petitioner admitted that the aforesaid construction of the Kalyana Mandapam is without obtaining necessary permission from the authority concerned and the property comprised in Survey Nos.43/12 and 43/13 is a Government Poramboke land and the Department is the competent authority for granting patta or rejection of the patta. Earlier, the Writ Petition filed by one Kandasamy in W.P(MD)No.3930 of 2018 is based on the fact that the aforesaid property is a Government poramboke land and this Court, by order, dated 26.02.2018, disposed of the Writ Petition directing the authority concerned to remove the encroachment.

7.The learned counsel appearing for the writ petitioner further submitted that though the Writ Petition filed by the petitioner in W.P(MD)No. 14887 of 2021, seeking patta in favour of the Temple, was disposed of on 27.08.2021, directing the authority concerned to consider the same and the



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fourth respondent recommended to issue patta to the petitioner, seeks two months time for approaching the authority concerned, failing which, the petitioner is ready to hand over the property in question, otherwise, the authority concerned shall take necessary action for securing the property in question and he also filed an undertaking affidavit to that effect.

8.The learned Special Government Pleader appearing for the respondents 1 to 4 submitted that the petitioner has encroached the Government poramboke land and also constructed the Marriage hall in the said Government poramboke land. Pursuant to the direction issued in the Contempt Petition in Cont.P(MD)No.685 of 2018, dated 30.11.2022, the impugned order, dated 02.12.2022, has been issued by the fourth respondent.

9.The learned Special Government Pleader further submitted that if the petitioner approached the authority concerned seeking for granting of patta to the land in question, based on the enquiry and the feasibility of the Court, the request of the petitioner shall be considered by the second respondent.



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10.The learned Special Government Pleader has also given an undertaking that the unauthorized construction of the Marriage Hall will be removed within a period of four weeks and the competent authority is the the Assistant Director of Town and Country Planning, Virudhunagar.

11.The learned counsel appearing for the fifth respondent, who is the contemnor in the Contempt Petition, submitted that since the order passed in W.P(MD)No.3930 of 2018, dated 26.02.2018, has not been complied with, the fifth respondent has filed the Contempt Petition in Cont.P(MD)No.685 of 2018. The learned counsel appearing for the fifth respondent further submitted that though this Court directed the authority concerned to remove the encroachment by following due process of law, the same has not been considered and prayed for dismissal of the Writ Petition.

12.Heard the learned counsel appearing on either side and perused the materials available on record.



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13.On a perusal of the materials available on record, it is seen that one Kandasamy, who has been impleaded as fifth respondent in the present Writ Petition, has filed a Writ Petition in W.P(MD)No.3930 of 2018 and this Court, by order, dated 26.02.2018, passed the following order:-

5.In the light of the above, further action pursuant to the order under Section 6 of the Act, dated 09.02.2018, is directed to kept in abeyance and the second respondent, Tahsildar, Kariyapatti Taluk, Virudhunagar District, is directed to conduct a survey of the entire area and wherever it is found that there is encroachment into Government land, road, etc., appropriate procedure be followed under the relevant statute and action be initiated against the encroachers after affording them adequate opportunity. The above direction shall be complied with, within a period of twelve weeks from the date of receipt of a copy of this order. If the second respondent, Tahsildar, Kariyapatti Taluk, Virudhunagar District, requires police protection, he shall address the Superintendent of Police, Virudhunagar District for necessary orders.

6.The writ petition stands disposed of accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.



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14.Since the said order, dated 26.02.2018, has not been complied with, the fifth respondent has filed a Contempt Petition in Cont.P(MD)No.685 of 2018, wherein, the petitioner is not a party to the aforesaid contempt proceedings.

15.When Cont.P(MD)No.685 of 2018 came up for hearing on 30.11.2022, this Court has passed the following order:-

"In the earlier order passed on 23.11.2022, we had indicated that the recommendation of the Revenue Tahsildar, Kariyapatti, in the proceedings issued dated July, 2022, runs contrary to the orders passed by this Court in W.P(MD)No.3930 of 2018, dated 26.02.2018, which could be in disobedience of the orders passed by this Court. With this observation, we had directed the Revenue Tahsildar, Kariyapatti, to appear before us with relevant files.

2. Accordingly, Mrs.S.Vijayalakshmi, Tahsildar, Kariyapatti, is present before this Court with relevant files. On her instructions, the learned Additional Government Pleader submitted that the "Annadhana Mandapam" is an encroachment and had accordingly, produced a Sketch of



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the encroached property. The learned Additional Government Pleader further submitted that they would withdraw the earlier proceedings in Na.Ka.AA2/4848/2015, dated July 2022 and they would also remove the encroachments in the subject lands in Survey No.43/12. He sought for four weeks time for reporting compliance of the removal of encroachment.

3. Call on 22.12.2022 for recording compliance. The personal appearance of the Tahsildar, Kariyapatti, is dispensed with for the present."

16. When the Writ Petition and Contempt Petitions came up for hearing on 23.02.2023, this Court passed the following order:-

"Challenging the notice issued under Section 7 of the Tamilnadu Land Encroachment Act, 1905, pursuant to the order passed by this Court in W.P(MD)No. 3930/2018, dated 26.02.2018, the petitioner has filed the present writ petition, contending that he has submitted application for granting of patta and the same is pending with the official respondents.

2. Alleging non compliance of the order passed in W.P(MD) No.3930/2018, dated 26.02.2018, above contempt petition is filed by the writ petitioner



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therein namely, Kandasamy.

3. According to the newly impleaded respondent who is the contempt petitioner, the writ petitioner has constructed a marriage hall in the place in question without any approval from the competent authority and therefore, it requires to be demolished. The competent authority to grant approval is the Assistant Director of Town and Country Planning.

4. Learned Special Government Pleader appearing for the official respondents is directed to get instructions for removal of the unauthorised construction made by the writ petitioner in the place in question, if the petitioner has not removed the unauthorised construction.

5. Insofar as the land in the property is concerned, learned counsel for the writ petitioner has made a request that the petitioner will approach the revenue authorities and get the patta within a period of two months and therefore, he sought for granting of two months time. 6. The said request of the petitioner will be considered by this Court in the next hearing. List the matter on 27.02.2023 at 02.15. p.m.”

17. Considering the facts and circumstances of the case, we are of the



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view that admittedly, the petitioner has constructed a marriage hall without obtaining permission from the competent authority and the competent authority to grant approval is the Assistant Director of Town and Country Planning, Virudhunagar District. Since the said Assistant Director of Town and Country Planning is not impleaded as a party respondent in the writ petition, we suo motu implead the Assistant Director of Town and Country Planning, Virudhunagar District as sixth respondent in the writ petition. Registry is directed to carryout necessary amendments in the writ petition.

18. The petitioner has made a request before this Court that the property in question is classified as "Kaliyidam and Kalimanai", which is a vacant land and it belongs to Revenue Department. As per the Revenue Standing Order, it is for the revenue authorities to consider for grant of patta to the persons, if they are found otherwise eligible. In such circumstances and in view of public interest involved, the petitioner seeks for liberty to approach the authorities concerned for grant of patta. Therefore, we are of the view that it is for the Government to consider for grant of patta to the petitioner, if he satisfies all other norms and regulations. It is made clear that this Court has not given any positive



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direction to the respondents to consider the request made by the petitioner.

19. Considering the above facts and circumstances and in the interest of justice, we are inclined to pass the following order:

(i) The sixth respondent is directed to take necessary action for removal of unauthorized constructions, in the lands in question by following the Rules, within a period of four weeks from the date of receipt of a copy of this order.

(ii) This order will not stand in the way of the petitioner to approach the authority concerned seeking for grant of patta for the aforesaid land in Survey Nos.43/12 and 43/13 in Vetrilaimurianpatti Village of Kariyapatti Taluk within a period of two months.

(iii) If no such patta is obtained within the said period, as per the undertaking given by the petitioner, the petitioner shall hand over the said land in question without any further notice, failing which, the authority concerned is directed to take possession of the property without any further reference to this Court.

20. With the above directions, W.P(MD)No.28544 of 2022 is

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disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

21. Recording the undertaking given by the learned Special Government Pleader that the unauthorized construction will be removed by the sixth respondent within the stipulated period, the Contempt Petition is closed. Consequently, connected Sub Application is closed.

[D.K.K.,J.] [L.V.G.,J.]
01.03.2023

NCC : Yes / No

Index : Yes / No

Internet : Yes

ps

To

1.The District Collector,
Office of the Collectorate,
Virudhunagar,
Virudhunagar District.

2.The District Revenue Officer,
Office of the District Revenue Officer,
Collectorate Complex,
Virudhunagar.

3.The Revenue Divisional Officer,

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Office of the Revenue Divisional Officer,
Aruppukottai, Virudhunagar.

4.The Tahsildar,
Office of the Tahsildar,
Kariyapatti,
Virudhunagar.

5.The Assistant Director of Town and Country Planning,
Virudhunagar.

6.Muthukrishnan,
The Tahsildar,
Kariyapatti Taluk,
Virudhunagar District.



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D. KRISHNAKUMAR,J.
and
L.VICTORIA GOWRI,J.

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ORDER MADE IN
W.P(MD)No.28544 of 2022
& W.M.P(MD)Nos.22544 & 22546 of 2022
and
Cont.P(MD)No.685 of 2018
& Sub.Aplc(MD)No.182 of 2022

DATED : 01.03.2023