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W.P.No.9810 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 06.01.2025

CORAM:
THE HON'BLE MR. JUSTICE M. SUNDAR
AND
THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.P. No.9810 of 2021 and W.M.P.No.10444 of 2021

Mohammed Ilyas

Petitioner

vs.

1. The District Collector
District Collectorate
Kesavalu Nagar
Kallakurichi
Tamil Nadu 606 202
2. The Sub Collector
Tirukoilur
Kallakurichi District
3. The Tahsildar
Ulundurpet
Kallakurichi District
4. The Executive Officer
Panchayat Office
Ulundurpet
Kallakurichi District
5. The Revenue Divisional Officer
Tirukoilur
Kallakurichi District
6. Subramani
7. The Commissioner
Ulundurpet Municipality
Kallakurichi District

Respondents

(R7 *suo motu* impleaded as per
order dated 02.12.2024)



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For petitioner Ms. Gopika Nambiar
for Mr. Sharath Chandran

For RR 1-5 & 7 Mr. T.K. Saravanan
Govt. Advocate

For R6 Mr. R. Rajarajan

ORDER

(made by M. SUNDAR, J.)

Captioned 'writ petition' ('WP' for the sake of brevity) and writ miscellaneous petition were disposed of in and by an order dated 02.12.2024 which reads as follows:

'Captioned 'Writ Petition' ['WP' for the sake of brevity] has been filed with a prayer for issue of writ of mandamus to R1 to R5 qua removal of alleged encroachment in Survey No.186/1 at Saradha Vidhyalaya Road, Kanthasamypuram East, Ulundurpet, Kallakurichi District [hereinafter 'said land' for the sake of convenience and clarity].

2. 6th respondent is a private respondent and he is the alleged encroacher.

3. When captioned matter was listed before Hon-ble Predecessor Bench [1st listing] on 21.04.2021, the following order was made:

'W.P.No.9810 of 2021
and
W.M.P.No.10444 of 2021

N.KIRUBAKARAN, J.
and
T.V.THAMILSELVI, J.

[Order of the Court was made by
N.KIRUBAKARAN, J.,]

Mr.M.Elumalai, learned Additional Government Pleader, takes notice on behalf of R1 to R3; Mr.S.Kamalesh Kannan, learned Government Advocate, takes notice on behalf of R4 & R5 and notice to R6 returnable by 21.06.2021. Private notice including email, whatsapp and courier is also permitted.



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2.The case of the petitioner is that the private respondent has put up a commercial complex in a poramboke land comprised in Survey No.186/1. A perusal of 'A' Register and Adangal would show that Survey No.186/1 is only a pathway.

3.In view of the same, there shall be an order of interim injunction as prayed for. Call the matter on 21.06.2021.

(NKKJ) (TVTSJ)
21.04.2021'

4. Today, Ms.Gopika Nambiar, learned counsel representing the counsel on record for writ petitioner, Mr.T.K.Saravanan, learned Government Advocate for R1 to R5 and Mr.R.Rajarajan, learned counsel for R6 [private respondent] are before us. To be noted, R6/private respondent has filed a counter affidavit and pleadings are complete.

5. Main WP was taken up and heard out.

6. The entire matter turns on a very narrow compass. The case of the writ petitioner is that at the time of filing captioned WP, R6 was putting up a construction [commercial complex] in said land, which has been classified as 'Pattai Poramboke' in revenue records. Learned State counsel on instructions submits that said land is classified as 'Pattai Poramboke', that there is an encroachment and that State will have to initiate action under appropriate Statute, namely, 'the Tamil Nadu Urban Local Bodies Act, 1998 (Tamil Nadu Act 9 of 1999)' [hereinafter 'TNULB Act' for the sake of brevity and convenience].

7. As regards R6/private respondent, as already alluded to supra, a counter affidavit has been filed. In the counter affidavit dated 29.06.2021, R6 has admitted that said land is classified as 'Pattai Poramboke' and the only point on which R6 predicates his resistance to captioned WP is that the writ petitioner is wreaking vengeance owing to personal enmity [prior suits between the parties] and that the writ petitioner has not chosen to seek action against other encroacher/s, who have committed similar encroachment/s.

8. In the light of the narrative thus far, the legal drill (disposal of captioned WP) has become a simple exercise. We deem it appropriate to write that it would be trite for the official respondents to initiate action forthwith under TNULB Act against R6 as well as other alleged encroacher/s not only in S.No.186/1



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but all alleged encroachments in the same road, namely, Saradha Vidhyalaya Road. Action under TNULB Act necessarily means that R6 as well as other alleged encroacher/s has/have to be show caused. This is vide Section 128(1)(b) of TNULB Act, which reads as follows:

'128. Power to remove encroachment from public place

(1) The Commissioner may -

(b) remove any immovable structure whether permanent or of temporary nature encroaching the street or public place or the land belonging to the departments of the Central or State Governments within the municipal limit, after issuing a show cause notice for such removal, returnable within a period of seven days from the date of receipt thereof:

Provided that the Commissioner shall consider any representation received within the time limit, before passing final orders.-

9. Though obvious when show caused, all the rights and contentions of R6 as well as alleged encroacher/s are preserved (untrammelled by this order) for sending suitable representations and if representations are sent as per proviso to Section 128(1)(b) of TNULB Act, the Commissioner of Ulundurpet Municipality has to pass an order. For this purpose we *suo motu* implead the Commissioner of Ulundurpet Municipality as R7 and Mr.T.K.Saravanan, learned Government Advocate accepts notice for R7 also.

10. In the light of the narrative thus far, we deem it appropriate to write that the interim order dated 21.04.2021 granted by Hon'ble Predecessor Bench will continue to operate. Further construction or removal of construction made up to the point of interim order will depend on the outcome of removal of encroachment proceedings under TNULB Act. We write this for the sake of specificity though this is obvious.

11. Captioned WP is disposed of in the aforesaid manner with the aforesaid directive. Consequently, captioned WMP is disposed of as closed. There shall be no order as to costs.'

2. Pursuant to the aforementioned 02.12.2024 order, the



captioned matter is listed under the cause list caption 'FOR REPOF...
today.

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3. Though a written report has not been filed, Mr.T.K.Saravanan, learned Government Advocate for RR 1 to 5 and 7, submits, on instructions, that survey has been conducted and notice will be issued within a fortnight from today, *i.e.*, by 20.01.2025. Though obvious, when notice is issued, all the rights and contentions of the noticee/noticees will stand preserved.

4. Today, Ms. Gopika Nambiar, learned counsel representing Mr. Sharath Chandran, learned counsel on record for writ petitioner and Mr. R. Rajaraman, learned counsel for R6 (private respondent) are also before us.

Recording the stated position of the learned State Counsel and making it part of earlier order dated 02.12.2024, we draw the curtains in the captioned WP and write that the captioned WP need not be listed any further.

(M.S., J.) (K.R.S., J.)
06.01.2025

cad



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M. SUNDAR, J.

and

K. RAJASEKAR, J.

cad

To:

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