



WEB COPY



W.P.No.13007 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN

THILAKAVADI

W.P.No.13007 of 2021

1.R.Rajasekar
2.R.Saravanan

... Petitioners

Vs.

1.The Commissioner
Salem Municipal Corporation
Salem - 636 001.

2.The Assistant Commissioner
Salem Municipal Corporation
Salem - 636 001.

3.The Revenue Divisional Officer
Salem Town, Salem - 636 001.

4.The Thasildar
Office of the Thasildar
Salem - 636 001.

Page Nos.1/11



W.P.No.13007 of 2021

5.B.Kalyani

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus by directing the respondents 1 to 4 to take immediate action to demolish and remove the illegal structures and encroachment on the public road in Survey No.179/3B 2 of an extent of 250 sq.ft. (approximately) in Kumarasamypatti Village, Chinnatirupathi, Salem, pursuant to the report dated 25.02.2020 of the fourth respondent and 12.06.2020 of the third respondent and pass such other order or orders as this Court may deem fit.

For Petitioners : Mr.V.Vijay Shankar

For Respondents : Ms.Rinsup Ria.M
for Ms.Devi.N for R1 & R2
Mr.P.Balathandayutham
Special Government Pleader for R3 & R4
R5 - No appearance

ORDER

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

This order will now dispose of the captioned 'Writ Petition' ['WP' for the sake of brevity].

2. Mr.V.Vijay Shankar, learned counsel for writ petitioners is before



W.P.No.13007 of 2021

WEB COPY

3. The cause list shows Mr.S.Sathish for R1 and R2 but Ms.M.Rinsup Ria, learned counsel representing Ms.N.Devi who is before this Court submits that she has now entered appearance for R1 and R2 and she is the counsel for R1 and R2. Mr.P.Balathandayutham, learned Special Government Pleader for R3 and R4 is also before us.

4. In the captioned WP, the kernel of the complaint of writ petitioners is an alleged encroachment to an extent of 250 sq.ft. in what has been described as 'public road' in 'Survey No.179/3B2 in Kumarasampatti Village, Chinnatirupathi, Salem' [hereinafter 'said land' for the sake of convenience and clarity] by R5. To be noted, R5 is a private respondent and Hon'ble predecessor Division Bench has ordered notice to R5 as early as on 23.06.2021. Notice to R5 [B.Kalyani] has been duly served and she has entered appearance through a counsel but there is no representation in the hearings on 21.06.2024 and this day.



W.P.No.13007 of 2021

5. Though the prayer in the writ petition describes the encroachment as public road, Mr.V.Vijay Shankar, learned counsel who is before us submits that it is a public street and in the light of Section 236 of 'Coimbatore City Municipal Corporation Act, 1981 (Tamil Nadu Act 25 of 1981)' [hereinafter 'said Act' for the sake of convenience and clarity] {which has been made applicable to Salem City Municipal Corporation}, the public streets vest in Corporation (to be noted, in the present case Salem Municipal Corporation).

6. We find that there is a provision for removal of encroachments of this kind under the said Act and that is Section 258 of the said Act but all roads and streets vested in any local authority were also deemed to be the properties of the Government. This is vide sub-section (2) of Section 2 of 'The Tamil Nadu Land Encroachment Act, 1905' [hereinafter '1905 Act' for the sake of convenience] and the said provision reads as follows :

'2. Right of property in public roads, etc. water and lands:-

(2) All public roads and streets, vested in any local authority shall, for the purposes of this Act, be deemed to be the property of Government.'



W.P.No.13007 of 2021

WEB COPY

7. Therefore whether it is a road or a street, it vests in the Government for the purposes of 1905 Act. The sequitur is this would also be covered under G.O.Ms.No.64 Revenue and Disaster Management Department, Land Disposal Wing dated 08.02.2022.

8. R5 who is the alleged encroacher has appeared through counsel but the counsel has not chosen to come before this Court today. However, the rights and contentions of R5 will stand preserved as the drill which is to ensue before the aforementioned Committee would include putting R5 on notice.

9. Considering the obtaining position, we are of the view that the captioned WP can be disposed of by giving direction to official respondents (R1 to R4) and putting in a safety valve / adequate protection qua private respondent i.e., R5.

10. In the light of what has been alluded to supra and considering the



W.P.No.13007 of 2021

limited scope of the captioned WP, with the consent of both sides, main WP was taken up.

11. Learned counsel for writ petitioners has referred to G.O.Ms.No.540 Revenue Department dated 04.12.2014 but it is brought to our notice that this G.O.Ms.No.540 has been referred to in G.O.Ms.No.64 Revenue and Disaster Management Department, Land Disposal Wing dated 08.02.2022.

12. It was submitted by learned Additional Government Pleader that G.O.(Ms)No.64, Revenue and Disaster Management Department, Land Disposal Wing, dated 08.02.2022 has been put in place, wherein and whereby Divisional Monitoring committee, District Monitoring Committee and State Steering Committee have been constituted *inter alia* for a single point reporting / monitoring system qua Government lands.

13. In the light of the narrative thus far, we deem it appropriate to refer the matter to the Divisional Monitoring Committee headed by Revenue



W.P.No.13007 of 2021

Divisional Officer (RDO), Salem, in the light of G.O.(Ms)No.64, Revenue and Disaster Management Department, Land Disposal Wing, dated 08.02.2022.

14. This Court directs the jurisdictional Divisional Monitoring Committee to examine if there is encroachment qua said land. The Divisional Monitoring Committee shall also ensure that adequate and ample opportunity is given to persons concerned more particularly alleged encroacher (R5) before taking a call. To be noted, all the rights and contentions of alleged encroacher is preserved for being raised before the Committee concerned which shall consider the same on its own merits and in accordance with law untrammelled by this proceedings in this Court.

15. The Divisional Monitoring Committee qua G.O.(Ms)No.64, Revenue and Disaster Management Department, Land Disposal Wing, dated 08.02.2022, shall (if it comes to the conclusion that there is encroachment) report the encroachment for further action (for removal of encroachment which again shall be after giving adequate and ample opportunity to alleged



W.P.No.13007 of 2021

encroacher).

WEB COPY

16. It is open to the writ petitioners and or anyone concerned with this matter to come to this Court on the same issue even with a similar / same prayer if there are any change of circumstances.

17. We make it clear that we have not expressed any view or opinion as to whether there is encroachment or not qua said land as it turns on facts and it is for the Divisional Monitoring Committee to take a call on this aspect of the matter.

18. Captioned WP is disposed of with the aforementioned observations and directives in the aforesaid manner. There shall be no order as to costs.

(M.S.,J.)

(K.G.T.,J.)

28.06.2024

(2/2)

Index : Yes / No

Neutral Citation : Yes / No
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Page Nos.8/11



WEB COPY



W.P.No.13007 of 2021



W.P.No.13007 of 2021

WEB COPY To

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WEB COPY



W.P.No.13007 of 2021

M.SUNDAR, J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,
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W.P.No.13007 of 2021

28.06.2024

Page Nos.11/11