



W.P. No. 12022 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2024

CORAM

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.P. No. 12022 of 2020

&

W.M.P. No. 14671 of 2020

A. Kumudha

..Petitioner

Vs.

1. The Collector,
Kallakurichi District,
Kallakurichi.
2. The Collector,
Villupuram District,
Villupuram.
3. The Revenue Divisional Officer,
Sankarapuram,
Kallakurichi District.



W.P. No. 12022 of 2020

WEB COPY

4. The Assistant Director (Panchayats),
Kallakurichi, Kallakurichi District.

5. The Block Development Officer,
Sankarapuram, Kallakurichi District.

6. K. Senthamizhselvi

7. Lingeshwari

8. Srivizhi

9. Kayalvizhi

10. Dharshan

(R6 to R10 suo motu impleaded as per
order of Court dated 24.06.2021 made
in W.P.No. 12022/2020 by NKKJ, TVTSJ)

..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying
for issue of a Writ of Mandamus directing the respondents more specifically
respondents 3 to 5 to implement the orders of the 2nd respondent dated
10.80.2018 and 15.10.2019 pursuant to the petitioner's representations
dated 10.10.2017 and 24.03.2020 and remove the encroachments on the
road in S.No. 47/4 on the Sankarapuram Kallakurichi main road of
Vadachetiyenthal Village of Kallakurichi District within a time frame as
fixed by this Court.

For Petitioner

:: Mr.P. Solomon Francis



W.P. No. 12022 of 2020

District by a sale deed dated 15.12.2006 vide document No.4673/06 before the SRO Sankarapuram. Since the date of purchase, the petitioner has been in enjoyment and possession of the property and patta has also been mutated in her name in Patta No. 654. The petitioner has been paying taxes regularly.

(ii) According to the petitioner, during the month of February, 2016, some miscreants had dumped construction material in her property and on enquiry, it was found that the same was done by one Selvaraj at the behest of the then President of Village Panchayat by name Karthikeyan. On a complaint lodged, the Inspector of Police Sankarapuram had conducted an enquiry pursuant to which action was taken to remove the constructions materials and thereafter, the complaint was closed. Subsequently, the petitioner started construction activities in her property after obtaining necessary approvals. However, irked by the complaint given by the petitioner, the then Panchayat President had dumped gravel on the path leading to the petitioner's property. Though the petitioner made complaints to the authorities and directions were given to remove the obstructions, no action was taken. In the meanwhile, the said Panchayat President had



W.P. No. 12022 of 2020

erected temporary shops made of metal sheets in front of the petitioner's property and adjacent properties on the road. According to the petitioner, the land on which the temporary sheds were erected was classified as "*Paattai Poramboke*" in S.No. 47/4. Due to the erection of these shops, the access to the petitioner's property and her neighbours was completely blocked. The petitioner sent a representation to the 1st respondent and the same was forwarded to 3rd and 4th respondents for enquiry. The 3rd respondent had also directed the 5th respondent to put the encroachers on notice and evict them immediately. Thereafter, a field survey was conducted by the Tahsildar and the 5th respondent herein and a report was also forwarded by them to the 1st respondent. Based on the inspection and the report, the 1st respondent passed a detailed order on 10.08.2018 directing the 4th respondent to forthwith remove the encroachments made on the road. Though a date was fixed for the removal of encroachments, the same was not done due to the influence exerted by the then Panchayat President, as stated by the petitioner. Owing to the same, the petitioner once again petitioned the 1st respondent and the 4th respondent herein had also sought a report from the 5th respondent. Thereafter, once again, the 1st respondent passed another



W.P. No. 12022 of 2020

order on 15.10.2019 directing the 4th respondent to remove the encroachments blocking the access of the petitioner and report the same before 18.10.2019. However, this order was also not executed.

(iii) Subsequently, the petitioner once again petitioned the 2nd respondent on 24.03.2020 narrating all the events and the inaction of the subordinates of the 2nd respondent. Thought the same was forwarded to the 4th respondent, who sought a report from the 5th respondent, nothing fruitful was done to remove the encroachments. Hence, the present writ petition seeking redressal of her grievance.

3. The 6th respondent, who is the wife of the erstwhile Panchayat President, has filed counter affidavit refuting the allegations made by the petitioner. According to the 6th respondent, the allegations made by the petitioner are baseless and that the petitioner cannot say that the constructions, which were made by her husband Karthikeyan for the welfare of the Panchayat are stumbling blocks to have access to her property. Moreover, according to the 6th respondent, there is enough space between the property of the petitioner and the constructions made by her husband in his capacity as Village Panchayat President to augment the income of the



W.P. No. 12022 of 2020

Panchayat. Further, there is no nexus between the property of the petitioner and the shops erected by her husband. She would further state that even as per the inspection report of the 4th respondent, there is a common pathway along the western side as well as the eastern side of the property of the petitioner to reach the main road and thus, the petitioner has access on both sides to reach the main road. Further, according to the 6th respondent, the inspection report of the 4th respondent states that the shops constructed by the Panchayat President are located in the land in Survey No. 47/4, which exclusively belongs to the Panchayat land and they cannot be termed as encroachments, as alleged by the petitioner. It is also the contention of the 6th respondent that the petitioner apprehends that the shops constructed by the Panchayat will affect the business in the commercial shops established in her property. Hence, the tall and vexatious claims made by the petitioner need to be rejected and the writ petition deserved to be dismissed.

4. Heard the learned counsel for the parties.

5. Mr.A. Selvendran, learned Special Government Pleader appearing for the official respondents would submit that though action was taken based on the complaint given by the petitioner, the order of the



W.P. No. 12022 of 2020

authority concerned has not been implemented and the encroachments are yet to be removed.

5. The 4th respondent herein, namely, the Assistant Director (Panchayats), Kallakurichi District, pursuant to the order of this Court dated 21.01.2021 has caused inspection of the site in question and filed his inspection report dated 25.02.2021 wherein it has been stated as hereunder:

“6. Further most respectfully submitted that the petitioner has alleged that the Panchayat President has occupied and encroached in 47/4 which is purely belongs to panchayat, where he had constructed 14 shops & put into auction and finalized the shops owners and signed the contract and collected the yearly rental for the enhancement of Panchayat Revenue.

Actually, 3 other private persons have encroached the land in S.No. 47/4 which belongs to Panchayat and notice has been given to them to evacuate (very far away from her building).

Minnalkodi w/o. Rajendran - House & shed

Mani S/o. Narayanasamy - Toilet

Indirani w/o Venkatachalam - House.



W.P. No. 12022 of 2020

WEB COPY

7. *I humbly further submit my inspection report as follows:*

- a) The petitioner's house is regularized and authorized in S.No. 52/1A, 1B.*
- b) She has a common pathway along western side and eastern side to access road on both sides.*
- c) The shops constructed by the Panchayat President located in panchayat land area and not in encroachment in S.No. 47/4 as alleged by the petitioner. This is merely to improve the revenue of the Village Panchayat.*
- d) Some private encroachments exist in S.No. 47/4 – Notice was also issued for eviction.*
- e) Necessary map and photographs of inspection site is enclosed along with my inspection report. Based on my inspection and Observation, there is no obstructions to access the road as alleged by the petitioner.”*

6. A perusal of letters dated 10.08.2018 and 15.10.2019 issued by the office of the District Collector, Villupuram to the Assistant Director (Panchayats), Kallakurichi reveal that the Assistant Director (Panchayats), Kallakurichi had been directed to take steps to remove the



W.P. No. 12022 of 2020

encroachments in Survey No. 47/4, which is a "*Pattai Poramboke*", in the light of the report submitted by Tahsildar, Sankarapuram. The inspection report submitted by the Assistant Director (Panchayats), Kallakurichi, also states that there are three private encroachments in the survey number in question. As far as the shops put up by the erstwhile Panchayat President are concerned, even assuming for the sake of argument that *Pattai Poramboke* vests with the Panchayat and those 14 shops were put up by the erstwhile Panchayat President to augment the income of the Panchayat, in the absence of any evidence to the effect that they were constructed following due process of law, it would amount to encroachment and they have to be removed. Hence, we are of the view that all the encroachments in S.No. 47/4, including 14 shops will have to be removed within a period of 2 months from the date of receipt of a copy of this order. It is open to the Panchayat to utilize the land for public purpose, which should be in accordance with law. It is open to the authorities to take Police Assistance for the purpose of removing the encroachments. We make it very clear that if the above encroachments within the time stipulated supra are not removed, it is open to the petitioner to initiate contempt proceedings. We



W.P. No. 12022 of 2020

also make it very clear that in case, wilful and deliberate disobedience is found, imposition of fine will be secondary and imprisonment will be primary.

7. The writ petition is disposed of accordingly. No costs.

Connected W.M.P. is closed.

(S.V.N.J.) (K.R.S.J.)
12.01.2024

nv

To

1. The Collector,
Kallakurichi District,
Kallakurichi.
2. The Collector,
Villupuram District,
Villupuram.
3. The Revenue Divisional Officer,
Sankarapuram,
Kallakurichi District.
4. The Assistant Director (Panchayats),
Kallakurichi, Kallakurichi District.

11\12



WEB COPY



W.P. No. 12022 of 2020

5. The Block Development Officer,
Sankarapuram, Kallakurichi District.

S. VAIDYANATHAN,J.
AND

K. RAJASEKAR,J.

nv

W.P. No. 12022 of 2020

12.01.2024

12\12