



WP.No.21518 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2024

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MRS.JUSTICE **K.GOVINDARAJAN**
THILAKAVADI

W.P.No.21518 of 2024

1.S.Kandhasamy
S/o. Sellappa Kavunder

2.K.Palaniappan
S/o.Karuppannan

... Petitioners

Vs.

1.The District Collector,
Collectorate, Namakkal,
Namakkal District-637 003.

2.The District Revenue Officer,
Collectorate, Namakkal,
Namakkal District-637 003.

3.The Revenue Divisional Officer,
Thirunchengodu Division,
Namakkal District -637 211

4.The Tahsildar,
Kumarapalaiyam Taluk,

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Namakkal District -637 183.
5.The Block Development Officer, (Village Panchayat)
Pallipalaiyam Block, Kumarapalaiyam Taluk,
Namakkal District -638 006.

6.P.Jaganathan
S/o. Palaniappa Kavunder.

7.C.Aayi Kavunder
S/o. Chinnakaruppa Kavunder

8.P.Kumarasamy,
S/o.Palaniappan

9.P.Sengodan,
S/o. Palaniappan

10.S.Jeyamani

11.Kandasamy ... Respondents

Writ Petition filed under Article 226 of The Constitution of India
praying to issue a Writ of Mandamus to direct the respondents 1 to 5 to
remove the illegal encroachments made by the respondents 6th to 11th and
restore the stream (Government Land), and to restore stream to its original
shape and condition, comprising in Survey Nos.8/1, 7/1 and 6/7, situated at,
Kulathukadu, Kumarapalaiyam Agraharam Village, Kumarapalaiyam Taluk,
Namakkal District within Registration District of Namakkal, Sub-
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Registration District of Kumarapalaiyam, within a stipulated time may be fixed by this Court.

For Petitioners : Mr.J.Agni Selvaraju
For Respondents : Mr.P.Balathandayutham
Special Government Pleader for R1 to R4
Dr.S.Suriya
Additional Government Pleader for R5

ORDER

[Order of the Court was made by **K.GOVINDARAJAN THILAKAVADI, J.,**]

The Writ petition has been filed in the nature of Mandamus directing the respondents 1 to 5 to remove the illegal encroachments made by the respondents 6 to 11 and restore the stream to its original shape and condition, comprising in Survey Nos.8/1, 7/1 and 6/7 situated at, Kulathukadu, Kumarapalaiyam Agraharam Village, Kumarapalaiyam Taluk, Namakkal District.

2.It is the claim of the petitioners herein that the respondents 6 to 11 illegally occupied and constructed buildings in the above mentioned stream,

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due to which the width of the stream is considerably reduced. Based on the petition dated 26.05.2023 submitted by the petitioners, the 4th respondent i.e., the Tahsildar, Kumarapalaiyam Taluk, Namakkal District, sent a letter to the 5th respondent i.e., the Block Development Officer, Pallipalayam Block, Namakkal District, to conduct an enquiry and demarcate the said stream on 18.08.2013 at about 10.00 a.m. Accordingly, the 5th respondent conducted an enquiry and demarcated the stream. However, no action has been taken against the said encroachers. Hence, the 2nd petitioner gave a representation on 12.08.2023 to the 3rd respondent i.e., The Revenue Divisional Officer, Thiruchengodu Division, Namakkal District, and to the Commissioner of Land Administration, Chepauk, Chennai for removal of the said illegal encroachments. Thereafter, the Commissioner of Land Administration vide Na.Ka.No.T3/5506118/2023 dated 12.09.2023 directed the 1st respondent i.e., the District Collector, Namakkal District, to take necessary action based on the petitioners' representation. The 3rd respondent by reply dated 20.12.2023, directed the 4th respondent to take necessary action on the said representation. But no action was taken. Hence, the petitioners were constrained to file the present writ petition.



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3. Issue notice

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4.Mr.P.Balathandayutham, learned Special Government Pleader, appearing for the respondents 1 to 4 and Dr.S.Suriya, learned Additional Government Pleader appearing for the 5th respondent accept notice.

5.By consent of the learned counsel for the writ petitioners and the official respondents, this writ petition is taken up for final disposal.

6.Mr.J.Agni Selvaraju, learned counsel for the writ petitioners would submit that the respondents 6 to 11 are in encroachment of the subject land which is against the Tamil Nadu Land Encroachment Act, 1905 (Act No.3 of 1905). Hence, it is just and necessary to remove the said encroachment made by respondents 6 to 11.

7.Mr.P.Balathandayutham, learned Special Government Pleader, for the respondents 1 to 4 submits that the Revenue Divisional Officer, Thiruchengodu Division, Namakkal District (R3) has sent a communication to the Tahsildar, Kumarapalaiyam Taluk, (R4) to survey the subject land and conduct an enquiry, and if there is any encroachment by the respondents 6 to 11, direction is also given to remove the said encroachments and to file a report. The learned Special Government Pleader further submits that if any



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encroachment is found, the same will be removed in accordance with law.

WEB COPY 8.The scanned reproduction of the said communication dated

20.12.2023 is as follows:

// நகல் //

ந.க.எண். 4857/2023/ஆ

வருவாய் கோட்டாட்சியர் அலுவலகம்,
திருச்செங்கோடு

நாள் : 20.12.2023

குறிப்பாணை

பொருள்: ஆக்கிரமிப்பு - நாமக்கல் மாவட்டம் - அரசாணை எண். 540-ன் கீழ் அரசு நிவர்த்திப்பாறை நிலம் மற்றும் அதில் உள்ள ஆக்கிரமிப்பை அகற்ற கோரி மனு - தொடர்பாக.

பார்வை: திரு. பழனியப்பன், த/பெ. கருப்பண்ணன், 5/301, கோம்பூர் அஞ்சல், பாப்பிரெட்டிப்பட்டி வட்டம், தர்மபுரி மாவட்டம் என்பவரின் மனு நாள் : 12.08.2023.

நாமக்கல் மாவட்டம், குமாரசாணையம் வட்டம், குமாரசாணையம் அக்ரஹாரம் கிராமம், குளத்துக்காடு பகுதியில் உள்ள அரசு புறம்போக்கு நிலத்தில் உள்ள நிர்வாழிப்பாறை சட்டவிரோத ஆக்கிரமிப்புகளை அகற்ற கோரி அரசாணை எண். 540..... ன்படி மேல்முறையீட்டு மனுவினை அளித்துள்ளார்.

பார்வையில் காணும் மனு அசனாக இத்துடன் இணைத்தனுப்பப்படுகிறது. மனுதாரர் கோரிக்கை தொடர்பாக தலத்தணிக்கை மற்றும் விசாரணை செய்து ஆக்கிரமிப்பு இருப்பின் அதனை அகற்றுமாலும் அதன் அறிக்கையினை இவ்வலுவலகத்திற்கு அனுப்பி வைக்குமாறும் திருச்செங்கோடு வட்டாட்சியர் கேட்டுக் கொள்ளப்படுகிறது.

இணைப்பு: மேற்கண்டவாறு

ஆம்./-சே.சுசத்தி
வருவாய் கோட்டாட்சியர்,
திருச்செங்கோடு.

// உண்மை நகல் //

நேச்சு உதவியாளர்

பெறுநர் :
வட்டாட்சியர்,
குமாரசாணையம்.

நகல்:

திரு. பழனியப்பன்,
த/பெ. கருப்பண்ணன்,
5/301, கோம்பூர் அஞ்சல்,
பாப்பிரெட்டிப்பட்டி வட்டம்,
தர்மபுரி மாவட்டம்.



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9. In the light of the above, this Court is inclined to pass the following orders:

(a) The Tahsildar, Kumarapalaiyam Taluk, is directed to make a local inspection and survey the disputed land. If any encroachment is found to be made by the respondents 6 to 11, the same shall be removed following the procedures either under the Tamil Nadu Panchayats Act, 1994, or under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, whichever is applicable.

10. If action is taken under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, the principles laid down in ***T.K. Shanmugam V. The State of Tamil Nadu reported in (2015) 5 LW 397 (FB)*** shall be followed adhering to paragraph 15 (f) of the said Full Bench Judgment, which is extracted as follows:

15. (f) We uphold the Act, while we provide for observance of principles of natural justice within the Act itself, as under.

(i) When the officer of the Public Works Department publishes the notice in Form -II in the



notice boards of the offices of Village Administrative Officer, Village Panchayat Office and the Water Resources Organization, notice shall also be issued to the alleged encroacher to the effect that the survey indicates that the place in his/her occupation is an encroachment and secondly, the notice in Form-III of the Rules may be issued.

(ii) On receipt of the said notice, the encroacher may give his/her objections relating to the classification of the land in his/her occupation and the nature of the encroachment within a period of two weeks.

(iii) Thereafter, the authorities shall consider the objections and pass appropriate orders, in accordance with the provisions of the Act, giving time to the encroachers to remove the encroachment.

11.If action is taken under the Tamil Nadu Panchayats Act, 1994, the Executive Authority or the Commissioner may by issuing show cause notice to the alleged encroachers as well as the petitioners, remove the encroachment as contemplated under Section 131(2) of the said Act.



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12.Since the respondents 6 to 11 are not before this Court, all their rights and contentions are preserved and left open for being canvassed before the official respondents.

13.With the above directions, this writ petition is disposed of. No costs.

(M.S.,J.) (K.G.T.,J.)

02.08.2024
(¹/₂)

Index : Yes / No
Neutral Citation : Yes / No
vsn

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Namakkal District -638 006.

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**M.SUNDAR, J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,**

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