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W.P. No. 33955 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2024

CORAM

**THE HON'BLE MR. JUSTICE S. VAIDYANATHAN
AND
THE HON'BLE MR. JUSTICE K. RAJASEKAR**

**W.P.No. 33955 of 2019
and
W.M.P.Nos. 34539 & 34540 of 2019**

M/s. Jeppiaar Educational Trust,
Represented by its Chairman,
Ms. Regeena J. Murali,
Semancherry, Chennai – 600 119.

... Petitioner

vs.

1. The Additional Chief Secretary/
Commissioner of Land Administration,
Ezhilagam, Chepauk, Chennai – 600 005.
2. The District Collector,
Kancheepuram District,
Kancheepuram.
3. The Tahsildar,
Sholinganallur Taluk Office,
Sholinaganallur, Chennai – 600 119.

4. T. Rajasekaran,

... Respondents



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Prayer: Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari calling for records pertaining to the impugned order in RC.No.T1/14093/2016, dated 07.09.2018 passed by the first respondent and quash the same.

For Petitioner : Mr. L. Gokulraj
(For Mr. Hari Radhakrishnan)

For RR 1 to 3 : Mr. J. Ravindran,
(Additional Advocate General)
(Assisted by A. Selvendran,
Special Government Pleader)

For R4 : Mr. S. Udayakumar

ORDER

(Delivered by K. RAJASEKAR, J.)

This writ petition has been filed by the petitioner praying to issue a writ of Certiorari calling for records pertaining to the impugned order in RC.No.T1/14093/2016, dated 07.09.2018 passed by the first respondent and quash the same.

2. The facts leading to filing of this writ petition is as follows:



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3. The fourth respondent herein, is having lands in Survey No.367/2B, 367/2C on the Semmancherry Village, Solinganallur Taluk, Kancheepuram District. This land is adjacent to the lands belongs to the petitioner herein comprised in Survey Nos.365 to 368, 356, 357, 371, 382 and 383. The fourth respondent filed a Writ Petition No.10328 of 2015 seeking mandamus, directing the respondents to remove the encroachment made by the petitioner herein on the common passage/ Cart Track (vandi pathai) adjacent to the fourth respondent's property and to remove the drainage pipeline put up underneath the fourth respondent's land. The Division Bench of this Court by Order dated 09.04.2015 has directed the Government Authorities to consider his representation, dated 27.12.2014 and to pass Order on merits with regard to his grievance.

4. Based on the above direction, the District Collector, Kancheepuram has initiated an enquiry and after hearing both sides, he has held that the petitioner herein has encroached a Cart Track/ passage leading from Thalampur village to Semmancherry main road, hence Ordered for removal of encroachment and to restore it into its original position.



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Subsequently, the petitioner has filed a Civil Suit, seeking declaration to declare the Order of the District Collector as 'null and void'. The petitioner has also filed an appeal before the District Collector, which was also dismissed by the Order dated 12.07.2016, stating the very same grounds.

5. After dismissal of the appeal, this Writ Petition has been filed by the petitioner herein.

6. During pendency of writ petition, the petitioner herein has approached the Commissioner of Land Acquisition by invoking appeal made under section 10(C) of the Tamil Nadu Encroachment Act, to set aside the Order of the District Collector. The Commissioner of Land Acquisition has considered the submissions and after hearing both sides has held that there was a Cart Track in existence and the same is shown as "Details" in the village accounts of 1911 and 1987. He further recorded that this Cart Track shown as "Details" runs from Thalampur Village to Sollinganallur and any encroachments or obstruction/ destroying the above "Details" is liable for action to be taken under provisions of Tamil Nadu Encroachment Act, 1905. After observing the same, the Land Commissioner has confirmed the Order



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of the District Collector, Kancheepuram.

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7. The case of the petitioner is that there was no existence of any passage/ Cart Track, as stated in the impugned Order. The predecessors in title of the petitioner's property have made cultivation of their lands individually. The fourth respondent purchased two acres and 50 cents of the nearby petitioner's lands and there was no common pathway as stated by him. The petitioner has already challenged the Order of the District Collector by filing suit in O.S. No.90/2016 on the file of Sub Court, Tambaram in which the District Collectors and others have been set ex-parte and suit is pending for ex-party evidence. The Cart Track in question, is in disuse by the villagers. The petitioner as well as the fourth respondent are enjoying the respective properties through which the Cart Track passes. Therefore, no prejudice is caused to the fourth respondent by the petitioner by disuse of the Cart Track.

8. The petitioner trust is running Educational institutions in its lands. With a view to improve the standard of Education and to meet the Educational needs of the students, it has raised buildings in several places.



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The General public is not using the Cart Track or passage from Vallavattal lake to Semmancherry main road, hence the Trust has constructed buildings and there was no objection raised by the fourth respondent and the buildings have also been raised many years ago. The land belongs to the fourth respondent is not fit for doing agricultural activities and the above lands are situated lower than the petitioner's lands. If the passage is allowed to be formed through the properties of the petitioner, there will be disturbance to the petitioner's buildings.

9. Even if it is accepted that the Cart Track has been encroached by the petitioner, the same was not in existence for the past 60 years, hence the fourth respondent plea is liable to be rejected on the ground of delay and laches. Since the suit filed and same is pending, the Order of the District Collector is liable to be set aside.

10. The fourth respondent filed his counter separately and stated that the District Collector has categorically held that there was an encroachment by the petitioner and the same is liable to be removed and the Cart Track has to be restored to its original position. The petitioner is not



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entitled to proceed on one hand, challenging the Order of the District Collector before the Civil forum and on the other hand filing the Statutory appeal. The contention of the petitioner that the villagers are not using the passage/ Cart Track is not valid, since the passage is made for the public and it must not be encroached by any person. The public passages are public properties, which should be maintained by the concerned Officials from being encroached.

11. We have considered the submissions made on both sides and the records produced on record:

12. The admitted facts herein are, the petitioner Educational Trust, is the owner of the lands in Survey Nos.365 to 368, 356, 357, 371, 382 and 383 and the fourth respondent is the owner of the lands in Survey Nos. 367/2B, 367/2C at the Semmancherry Village, Solinganallur Taluk, Kancheepuram District. The petitioner is using his land for running Educational institutions and the fourth respondent's land is situated adjacent to the petitioner's land. Even though, initially the petitioner herein claims that there was no Cart Track/ passage running through its lands, it admits in



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the paragraph no.5 of its counter filed in W.P. No.16620 of 2019 that the Cart Track is in disuse by the villagers and the petitioner and fourth respondent are enjoying their lands, in which the Cart Track/ passage passes. No Officials have taken any action for the Cart Track being put to disuse. Hence, no land meant for public is being encroached upon. Further, the petitioner trust states that since the Cart Track/ passage not being used by the villagers, the private parties herein are enjoying the Cart Track/ passage. This submission was taken not by the respective authorities while passing the impugned Order herein.

13. The impugned Order of the District Collector states that, Generally, existence of any passage or Cart Track would be referred in the village map under the category "Details" after necessary sign marking in the field map. In this case, there was a passage described in the village sketch as well as in the field map by marking under the caption "Details". This Cart Track starts from South of the Thalampur village from Valavattal Lake bank and runs through the Survey Nos.365, 366, 367 and to the lands of the petitioner in Survey Nos.368, 356, 357, 371, 382 and 383 towards North and merges with Semmancherry main road. Now, the petitioner herein claims



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that this passage/ Cart Track is in disuse, hence restoration of this pathway is not necessary.

14. During pendency of this petition, the Statutory appeal filed before the Land Commissioner was taken up for enquiry and the same was rejected stating very same reasonings, after rejecting the contention of petition herein. The Hon'ble Apex Court, time and again has re-iterated that the public passages/ pathways, streets, public places are the public properties and the same shall not be allowed to be encroached.

15. In ***Ahmedabad Municipal Corporation vs. Nawab Khan Gulab Khan [(1997) 11 SCC 123]***, the Supreme Court after referring to the earlier decisions has observed thus:

“The removal of encroachment needs urgent action. But in this behalf what requires to be done by the competent authority is to ensure constant vigil on encroachment of the public places. Sooner the encroachment is removed when sighted, better would be the facilities or convenience for passing or re-passing of the pedestrians on the pavements or footpaths facilitating free flow of regulated traffic on the road or use of public places. On the contrary, the longer the delay, the greater will be the danger of permitting the encroachers claiming semblance of right to obstruct removal of the encroachment.”

16. The Full Bench of this Court in ***Ramaraju, T. vs. State of Tamil***



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Nadu [MANU/TN/0600/2005: 2005 (@) CTC 741 (FB)], while issuing clarifications regarding the steps to be followed for removal of encroachment has held that the Authorities concerned shall take necessary actions by invoking relevant provisions of law. For better appreciation, the paragraph No.38 is as follows:

“38.....

(1) If the encroachment is on road or road margins, vested in Municipalities, the removal if any is to be effected only after following the procedure contemplated in Chapter IX of the Tamil Nadu District Municipalities Act and more particularly the provisions contained in Section 182 and Section 183(6). Before taking action under Section 182 of the District Municipalities Act, notice in writing giving atleast two weeks should be served and, if the person avoids to receive the notice, such notice can be effected by affixture. However, notice by any other means, such as through public announcement of beating of drums or by general notice in newspapers, may not be sufficient.

.....

(3) Payment of property tax, provisions of water connection or electricity by themselves cannot be construed as conferring any independent right, if the encroachment is otherwise unauthorised.

(4) The above directions and observations are also applicable to encroachment in respect of road or road margins coming within the jurisdiction of Municipal Corporation or Twon and Village Panchayats, in which event, necessary action can be taken by the concerned authorities by following the relevant provisions of law applicable to such Corporation or Panchayats.

.....

(6) If the encroachment is on the land belonging to the Local Authorities, but such land is not part of the road or road margin or roadside land, eviction can be effected by following the procedure contemplated in law, namely, either by taking recourse to the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 or any other law applicable or otherwise by taking recourse to Civil Courts and not by use of unilateral



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force.

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(7) *So far as the encroachment on the land belonging to the Government is concerned, action for eviction if any can be taken only by the appropriate authority and by following the procedure contemplated under the Tamil Nadu Land Encroachment Act, 1905.*

.....”

17. In this case, the pathway/ Cart Track is not a small passage, running between private lands of petitioner and the fourth respondent alone, this passage/ Cart Track connecting the Semmancherry main road to the village called Thalambur and now this area falls in the Sollinganallur, which is a prominent part of the Chennai city and also the Semmancherry and its surrounding area is an IT hub and have satellite townships. Hence, the stand taken by the petitioner that the fourth respondent and the petitioner herein are enjoying the Cart Track by blending into their lands is not appreciable. Further, the fourth respondent herein has also taken a stand that the passage/ Cart Track was not disused and it was encroached by the petitioner herein by blocking the same, which resulted in disuse of the said passage. It has been stated that the Government passed a Government Order in G.O.(Ms).No.2254/ Revenue Department, dated 20.02.1952, stating that the land owners are not entitled to encroach the pathway/ Cart Track/ passage, which are referred as "Details" in the Village Map or in the Field Map, etc.,



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It is also stated that "Details" could not be altered, even if it is in the private land, based on this Government Order and on the fact that this passage/ pathway is connecting the village into the main road i.e., from Thalambur to Semmancherry main road. This Court is of the view that the petitioner has no manner of right to destroy or put to disuse the Cart Track / passage or to prevent the persons from using the public passage.

18. As stated by the Hon'ble Apex Court judgments cited supra, the public pathways/ passages are not allowed to be encroached for utilization of private parties and it is the public property, which must be put to use for general public. The next contention raised by the petitioner herein is that, he also filed a Civil Suit, challenging the impugned Order of the District Collector and the suit is also pending, hence further action shall not be taken for removal of encroachment.

19. The suit filed seeking declaration of the Order passed by the District Collector is not maintainable in view of Section 14 of the Tamil Nadu Land Encroachment Act 1905 (as amended and substituted by Tamil Nadu Act 1/1996), which reads as follows:



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"Bar of Jurisdiction of Courts:- Notwithstanding anything contained in any law, for the time being in force, no order passed or proceeding taken by any officer of authority or the State Government under this Act, shall be called in question in any Court, in any suit or application and no injunction shall be granted by any Court in respect of any action taken or to be taken by such officer or authority or the State Government in pursuance of any powers."

20. This Court in catena of judgments has already held that the Civil Suit filed challenging any of the actions taken in the Land Encroachment Act is not maintainable. For reference the following judgments are cited below:

1. *Arulmighu Vinayagar Kovil, rep. By its Trustee k. Sundar Raj vs. The Sub Divisional Engineer, Highways & Rural Works Coimbatore and another [2012 SCC Online Mad 465]*
2. *S. Jayaraman vs. The Corporation of Madras, rep. by its Commissioner and others [(2012) 7 Mad LJ 659]*
3. *K.S. Nallasamy and Others vs. Ramasamy [2021 SCC Online Mad 2693]*

21. In *State of Tamil Nadu and Others vs. S. Venkatachalam and Others [AIR 2019 Mad 79]*, this Court had an occasion to consider the civil suit filed by the encroacher from dispossessing him from the Government land, and has raised its concern about entertaining the suit and grant of Interim Order of Status quo or Injunction mechanically by the Civil Courts in



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the matters of encroachments. This Court in its Order in Paragraph 24 (f), has directed the circulation of the copy of the Order passed in this case to create awareness to all the District Collectors in the State of Tamil Nadu to take steps to strike off the complaints wherever the cases already filed and pending, attracting the provisions under the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 and Tamil Nadu Land Encroachment Act, 1905 within their respective jurisdictional Courts without any delay.

22. In this case, the petitioner has filed a suit in the year 2016 challenging the Order passed by the District Collector under section 10 of the Land Encroachment Act, which squarely falls within the ambit of section 14 of the Act. Hence the suit filed by the petitioner herein is liable to be struck off. We hope the respondent would take appropriate steps as directed by this Court as early in the year 2018 in the judgment of *State of Tamil Nadu and Others vs. S. Venkatachalam and Others* cited supra.

23. Further, the petitioner herein has filed a Statutory appeal against



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the Order of the District Collector, which is also dismissed by the Land Commissioner for the reason indicated supra in earlier paragraphs, and confirmed the Order of the District Collector, hence this Court is of the view that the relief claimed by the petitioner in this writ petition is not having any merits, the same is liable to be dismissed.

24. In the result, the Writ Petition stands dismissed. No costs. Consequently, the connected miscellaneous petitions are also closed.

(S.V.N.J.) (K.R.S.J)
05.01.2024

Index : Yes/No
Internet : Yes/No
stn

To

1. The Additional Chief Secretary/
Commissioner of Land Administration,
Ezhilagam, Chepauk, Chennai – 600 005.
2. The District Collector,

15/17



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Kancheepuram District,
Kancheepuram.

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3. The Tahsildar,
Sholinganallur Taluk Office,
Sholinaganallur, Chennai – 600 119.

K. RAJASEKAR, J.

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