



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2024

CORAM:

**THE HON'BLE MR.JUSTICE S.S.SUNDAR
and
THE HON'BLE MR.JUSTICE N.SENTHILKUMAR**

Cont.P.No.2903 of 2022

P.Kanakaraj

...Petitioner

vs.

1.Mr.Karunanithi,
The Block Development Officer,
Omalur Village,
Omalur Union Office,
Omalur Taluk,
Salem District.

2.The Tahsildar,
Omalur Taluk,
Salem District.

...Respondents

*(Suo motu impleaded as second respondent
as per the order of the Court dated 01.11.2023
made in Cont.P.No.2903 of 2022)*

Prayer: Contempt Petition filed under Section 11 of Contempt of Courts Act, 1971, to punish the respondent for not complying with the order in W.P.No.9038 of 2019 on 27.08.2019.

For Petitioner : Mr.G.Munuraj

For Respondents : Mr.A.Selvendran
Special Government Pleader



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ORDER

(Order of the Court was made by S.S.Sundar, J.)

This petition is filed by the petitioner alleging wilful disobedience of the order passed by this Court dated 27.08.2019 in W.P.No.9038 of 2019 by the respondents herein.

2.The petitioner filed the Writ Petition in W.P.No.9038 of 2019 for issuance of a Writ of Mandamus directing the third respondent viz., the Block Development Officer, Omalur Village, Omalur Taluk, Salem District to demolish the illegal construction in S.No.114/1 of Kottamettupatti Village, Omalur Taluk, Salem District as per Sections 56 and 57 of the Tamil Nadu Town and Country Planning Act, 1971.

3.This Court after recording the submission of the third respondent viz., the Block Development Officer, in the counter affidavit to the effect that the land in which the private respondent had put up construction is a Government poramboke land and is classified as “Tharisu”, passed the following order:

“3.The learned Government Advocate has filed a counter affidavit of the third respondent, i.e., the Block Development Officer, Omalur,



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wherein it is stated that the land in S.F.No.114/1 is Government poramboke land and is classified a “Tharisu”. It is also stated that the said land belongs to the Government and there is no title and interest over the above said property to the fifth respondent or anyone else. The learned Government Advocate further stated that they will take action to remove the unauthorized construction and encroachment put up on the said piece of land by the fifth respondent or any other encroacher.”

4.Except the statement of the learned Government Advocate that the respondents will take action to remove the unauthorized construction and encroachment put up on the said piece of land by the fifth respondent or any other encroacher, there is no positive direction. The petitioner's claim is that the fifth respondent had put up unauthorized construction. There is nothing for initiating proceedings for contempt in the absence of any positive direction by this Court to the contemnor asking to take action for removal of unauthorized construction.

5.Since the statement of the learned Government Advocate that the respondents will take action to remove the unauthorized construction and to remove the encroachment in the Government property, this Court has



already suo motu impleaded the Tahsildar, who is competent to take action.

6.Learned Special Government Pleader on instructions submitted that the second respondent who has been impleaded as party, has already initiated action under the provisions of the Tamil Nadu Land Encroachment Act, 1905. It is further stated that as against the final order under Section 6 of the Tamil Nadu Land Encroachment Act, 1905, the fifth respondent and other encroachers against whom similar notice was issued, had preferred an appeal before the District Collector under Section 10 of the Tamil Nadu Land Encroachment Act. It appears that the Collector has also dismissed the appeal. After filing a revision before the Government, it appears that the private respondent viz., the fifth respondent and other encroachers have filed a Writ Petition challenging the proceedings initiated under the Tamil Nadu Land Encroachment Act, 1905.

7.Learned counsel for the petitioner pointed out that the prayer in the Writ Petition was to remove the unauthorized construction as against the private respondent. Since there is no specific direction, except recording of statements of the learned Special Government Pleader, we



find there is no cause of action to initiate proceedings for contempt as against the respondents.

8.In view of the statement made before this Court by the learned Special Government Pleader, at the time of the hearing this Writ Petition, the Block Development Officer may initiate independent proceedings if it is permissible under law for removal of unauthorized construction after issuing due notice to the persons concerned who had put up unauthorised constructions.

9.Accordingly, the Contempt Petition is closed.

(S.S.S.R.,J.) (N.S.,J.)
28.02.2024

Index: yes/no
Speaking order:yes/no
Neutral Citation:yes/no
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S.S.SUNDAR, J.
and
N.SENTHILKUMAR, J.

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