



W.P.(MD) No.9055 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.08.2024

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

W.P.(MD) No.9055 of 2009

1.S.Madasamy
2.V.Pandiammal
3.Poongodi
4.S.Pandi

... Petitioners

-VS-

- 1.The State of Tamil Nadu,
Represented by its Secretary,
Department of Revenue,
(Land Development),
Fort. St. George, Chennai - 9.
- 2.The Special Commissioner and
Commissioner of Land Administration,
Government of Tamil Nadu,
Chepauk, Chennai -5.
- 3.The District Collector,
Thoothukudi District,
Thoothukudi- 8.
- 4.The Revenue Divisional Officer,
Kovilpatti, Thoothukudi District.
- 5.The Tahsildar,
Ottapidaram Taluk,
Thoothukudi District.



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6.The Block Development Officer,
Ottapidaram Taluk,
Thoothukudi District.

7.The Executive Engineer (WRD),
Public Works Department,
Korampallam River Basin Region,
Sivankoil Street,
Thoothukudi – 2.

8.Ind Bharat Power Gen Company Ltd.,
Represented by its Managing Director,
Project Site – Keezhavelayuthapuram Village,
Pudurpandiyapuram Panchayat,
Melarasadi Post, Thoothukudi- 2.

9.Deepak Maini,
Interim Resolution Professional,
Ind Bharat Power Gen Company Ltd.,
Residing at:C/100, Sec-2, Noida,
Uttarpradesh – 201 301.

... Respondents

(R9 is impleaded vide Court order
dated 20.02.2024 in W.M.P.(MD)No.3237 of 2024
in W.P.(MD)No.9055 of 2009 by DKKJ & RVJ)

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondent nos. 1 to 7 to remove the encroachments made by the respondent no.8 in the Odai Poramboke in 'Mootha Odai' and cart track to an extent of 0.81.0 hectares, in Survey No. 32/7, 34/3 and 38/1, Pudur Pandiapuram Village, Ottapidaram Taluk, Thoothukudi District to an extent of 0.22.0 Ares.

For Petitioner	: Mr.M.P.Senthil
For Respondents 1 to 7	: Mr.S.P.Maharajan Special Government Pleader
For 8 th Respondent	: No Appearance



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ORDER

[Order of the Court was made by R.SUBRAMANIAN, J.]

The prayer in the Writ Petition reads follows:-

“To issue a Writ of Mandamus, directing the respondents 1 to 7 to remove the encroachments made by the 8th respondent in the Odai Poramboke in 'Mootha Odai' and cart track to an extent of 0.81.0 hectares, in Survey Nos.32/7, 34/3 and 38/1, Pudur Pandiapuram Village, Ottapidaram Taluk, Thoothukudi District to an extent of 0.22.0 Ares”

2.The fact that the company namely, the 8th respondent in the Writ Petition, has encroached upon 0.93.5 hectares of Government land is not in dispute. The fact that the said company is in the process of liquidation is also not in dispute and the proceedings are pending before National Company Law Tribunal, Hyderabad and an Interim Resolution Professional has also been appointed. In a similar Writ Petition filed by another person, the Division Bench of this Court had passed an order, directing the removal of encroachments and the copy of the order has also been marked to the Presiding Officer of the National Company Law Tribunal, Hyderabad Bench and Mr.Deepak Maini, the Interim Resolution Profession appointed by



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National Company Law Tribunal. There has been no response whatsoever.

The Tahsildar, Ottanpidaram, in his instructions to the learned Government Pleader has said that since the NCLT has passed an order prohibiting institution of a suit or continuation of a pending suit or proceedings against the Corporate debtor including execution of any judgment and decree or order in any Court of law, Tribunal, Arbitration panel or other authority. There is also a prohibition from **Transferring, encumbering, alienating or disposing of by the Corporate debtor any of its assert or any legal right or beneficial interest therein any action to foreclose, recover or enforce any security interest created by the Corporate debtor in respect of which property including any action taken under the securitization and reconstruction of financial assets and Enforcement of Security Interest Act, 2002, the recovery of any property by the owner or lessor, where such property is occupied by or in possession of the Corporate debtor.** The Tahsildar sees this order as a prohibition against initiation of proceedings under the Land Encroachment Act, 1905.

3.We are unable to sustain the contention of the fifth respondent namely, Tahsildar, Ottapidaram. The prohibitory order issued by NCLT would apply only if the company that is being wounded up is in legal possession of the property. An illegal possession of the property by way of encroachment cannot be or shall not be protected by NCLT or any Court for



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that matter in proceedings for liquidation of the encroacher. Therefore, there will be a direction to the respondents to initiate appropriate proceedings under the Land Encroachment Act, 1905, against the company represented by the Interim Resolution Professional, Mr.Deepak Maini, C/100, Sector -2, Noida, Uttarpradesh – 201 301, Email.id:deepak.maini@insolvencyservice.in. The needful to be done within the period of four weeks from the date of receipt of copy of this order and the compliance to be reported this Court by 17.09.2024. Post on 17.09.2024 '**for reporting compliance**'.

4.Accordingly, the Writ Petition is disposed of. No costs.

[R.S.M., J.]

[L.V.G., J.]

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NCC : No
Index : No
Internet : Yes
Mrn/Sml



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