



WP(MD). No.12492 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Date : 20/12/2024

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**THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE
AND
THE HON'BLE MRS.JUSTICE L.VICTORIA GOWRI**

**WP(MD). No. 12492 of 2021
and
W.M.P.(MD)No.9782 of 2021**

P.Backiyalakshmi

... Petitioner

Vs

The Executive Officer/
Panchayat President,
Erichanatham Panchayat,
Erichanatham,
Sivakasi Taluk,
Virudhunagar District.

...Respondent

PRAYER :- Writ Petition, filed under Article 226 of the Constitution of India, praying this court to issue a Writ of Certiorari, to call for the records relating to the impugned order issued by the respondent, dated 13.07.2021 and quash the same.

For Petitioner : Mr. G.Mohankumar

For Respondent : Mr.SRA.Ramachandran
Additional Government Pleader



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ORDER

**(Order of the Court was made by
the Hon'ble the Chief Justice)**

In a counter affidavit filed by the Tahsildar in a petition being W.P.(MD)No.18266 of 2017, that was filed to remove the encroachment made by respondents 5 and 6 therein, one of whom is petitioner in this petition, averment has been made by the Tahsildar which are as under:

“12. It is submitted that P.Backialakshmi has filed a writ in W.P.(MD) No.12492 of 2021 before this Hon'ble Court and prayed issue a writ or direction in the nature of writ of Certiorari to call for the records relating to the impugned orders issued by the respondent (Executive Officer/Panchayat President, Erichanatham Panchayat, Sivakasi Taluk, Virudhunagar District) dated 13.07.2021 and quash the same.

13. It is submitted that this Hon'ble Court has passed the following order on 23.07.2021 "The petitioner has filed a suit for declaration in O.S.No. 80 of 2017 before the Subordinate Court, Virudhunagar in which an ex-parte decree was passed on 25.07.2019, by which a declaratory relief



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has been granted in favour of the petitioner. In the light of the above there will be an order of interim stay".

14. It is submitted that S.No.1258/11 (Old S.No.536/1 Part) measuring 0.0054.0 Sq.Metr of Erichanatham Village, Sivakasi Taluk, Virudhunagar District is classified as Natham vacant site, as per Natham Settlement records. Backialakshmi has made encroachment over an extend of 0.0026.0 Sq.Meter and constructed a Tin shed in S.No.1258/11. Backialakshmi was not granted any patta by the Tahsildar, Sivakasi in S.No. 1258/11. In the absence of filing any counter affidavit by the Defendants, the Hon'ble Subordinate Judge, Virudhunagar has delivered the ex-party judgment and decree in O.S.No.80 of 2017 dated 25.07.2019. It is submitted that the Government Pleader, Sivakasi has been requested to prefer appeal immediately against the judgment and decree delivered by the Subordinate Judge, Virudhunagar in O.S.No.80 of 2017 dated 25.07.2019. Based on the out come of the judgment and decree in the Appeal suit, the second respondent will take action to evict the encroachment made by 6th respondent. This



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Hon'ble Court has also granted interim stay as stated in para 13 of the Counter affidavit.

15. It is submitted that on receipt of judgment and decree in the Appeal Suit, the 2nd respondent will take action to evict the encroachment made by 6th respondent in Survey No.1258/11 MuthalammanKoil Street, Erichanatham Village, Sivakasi Taluk, Virudhunagar District.”

2.Counsel states that in view there of, this petition can be disposed of with an observation that petitioner could be evicted provided petitioner loses in the suit filed by the petitioner namely O.S.No.80 of 2017.

3.Counsel for respondent concurs.

4.Therefore, second respondent will take action to evict the encroachment made by the petitioner, if the outcome of the suit in O.S.No.80 of 2017, pending before the Subordinate Judge, Virudhunagar is against the petitioner.



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5.Petition is disposed. There shall be no order as to costs.

Consequently, interim application stands dismissed.

(K.R.SHRIRAM, C.J.)

(L.VICORIA GOWRI, J.)

20.12.2024

NCC : Yes/No

Index : Yes/No

MR



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THE HON'BLE CHIEF JUSTICE

AND

L.VICTORIA GOWRI, J.

MR

ORDER

IN

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