



W.P(MD)No.12006 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.06.2024

CORAM:

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN**

**W.P(MD)No.12006 of 2024
and
W.M.P(MD)Nos.10688 & 10689 of 2024**

P.Abdul Raguman

... Petitioner

VS.

1.The District Collector,
Collectorate Campus,
Thoothukudi,
Thoothukudi District.

2.The Revenue Divisional Officer,
Kovilpatti,
Thoothukudi District.

3.The Tahsildar,
Kayathar,
Thoothukudi District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records relating to the impugned eviction notice issued by the third respondent in his proceedings in Na.Ka.No.A2/7138/2022, dated 29.05.2024 and quash the same as illegal.



W.P(MD)No.12006 of 2024

WEB COPY

For Petitioner

: Mr.C.Venkatesh Kumar

For Respondents

: Mr.S.Shaji Bino
Special Government Pleader

ORDER

(Order of the Court was made by R.SURESH KUMAR, J.)

The prayer sought for in this Writ Petition is for a Writ of Certiorari, to quash the impugned eviction notice issued by the third respondent in his proceedings in Na.Ka.No.A2/7138/2022, dated 29.05.2024.

2.In respect of the property at Survey Nos.121/1A, 119, 94/1, 94/2, 86 and 87 at Ayyanaruthu Village, Kayathar Taluk, Thoothukudi District, there has been a dispute between the present petitioner and others. The dispute was that there had been a cart track flowing on these survey numbers which was the main ingress and egress of various agriculturists, who had lands in the nearby areas. In this context, it is the further case of those people that the present petitioner and his family members have put up a fence recently ie., 2-1/2 years back and agricultural activities had been undertaken even blocking the cart track, thereby the main ingress and egress of others are affected.

2/12



W.P(MD)No.12006 of 2024

WEB COPY

3. Therefore, treating it as an encroachment and to remove the same, one M.Guruputhiran filed a Writ Petition before this Court in W.P(MD)No.13092 of 2023, which was disposed of by a Division Bench of this Court by its order, dated 13.12.2023, where direction had been given to initiate all appropriate actions in the manner known to law to remove the encroachment.

4. Pursuant to the said order passed by the Division Bench of this Court dated 13.12.2023, the provision of Act, 3 of 1905 was invoked by the third respondent/the Tahsildar, who ultimately passed orders under Section 6 of the said Act on 21.02.2024, where he found that there has been an encroachment in Survey Nos.94/1 and 94/2 and directed the petitioner to remove such encroachment within a time frame.

5. Since the petitioner has not removed such encroachment, the Tahsildar has come forward to issue the present order ie., by way of execution on 29.05.2024 directed the petitioner to remove such encroachment on or before 06.06.2024, failing which on 07.06.2024, removal of encroachment would be undertaken and the encroachment would be removed.



W.P(MD)No.12006 of 2024

WEB COPY

6.On receipt of the said communication dated 29.05.2024, the petitioner has filed an appeal before the District Collector ie., the first respondent on 05.06.2024 ie., the day before yesterday.

7.As the deadline has been fixed only up to 06.06.2024 and the removal of encroachment would be undertaken by the revenue authorities on 07.06.2024, ie., today, the petitioner urgently moved the present Writ Petition with the aforestated prayer.

8.Mr.C.Venkatesh Kumar, learned counsel appearing for the petitioner has submitted that Survey Nos.94/1 and 94/2 are the patta lands where he has been undertaking agricultural activities and there are grown-up coconut trees nurtured by him are standing. When that being so, it cannot be treated as a cart track and no such cart track is available at any point of time and not had been used by anyone including the said individual, who filed the said Writ Petition, which triggered these actions which emanated from the revenue authorities and therefore, the present order, dated 29.05.2024 is beyond the jurisdiction of the revenue authorities to invoke the provisions of Act 3 of 1905. Hence, he seeks indulgence of this Court.

4/12



W.P(MD)No.12006 of 2024

WEB COPY

9.However, Mr.S.Shaji Bino, learned Special Government Pleader appearing for the respondents has submitted by relying upon the written instructions given by the third respondent/the Tahsildar, dated 07.06.2024, where the Tahsildar has stated the following:

தூத்துக்குடி மாவட்டம், கயத்தாறு வட்டம், ஆய்யனாரூத்து கிராமம் - சர்வே எண்கள் 121/1A, 119, 94/1, 94/2, 86, 87 ல் செல்லும் நிலவியல் பாதை நிலத்தில் ஆக்கிரமிப்பு உள்ளதை அகற்றக் கோரி திரு.குருபுத்திரன் என்பவர் பார்வை 2 ல் கண்டவாறு வழக்கு தொடர்ந்ததில் அரசாணை நிலை எண் 64 வருவாய் மற்றும் பேரிடர் மேலாண்மைத்துறை நான் 08.02.2022 னை பின்பற்றி 12 வாரங்களில் ஆக்கிரமிப்பினை அகற்றி உத்தரவிடப்பட்டதை தொடர்ந்து சார்நிலை அலுவலரின் அறிக்கை மற்றும் கிராம கணக்குகள் பரிசீலனை செய்யப்பட்டதில், கயத்தாறு வட்டம், ஆய்யனாரூத்து கிராமம், சர்வே எண் 121/1A, 119, 94/1, 94/2, 86, 87 ஆகிய புன்செய் நிலத்தில் செல்லும் நிலவியல் பாதை புலப்படத்தில் விளக்கியாக குறியீடு செய்யப்பட்டுள்ளது. மேற்படி சர்வே எண்களில் நிலவியல் பாதை ஆக்கிரமிப்பு செய்துள்ளது உறுதி செய்யப்பட்டது. அதன் விவரம் பின்வருமாறு

சர்வே எண்	நிலத்தை பற்றிய விவரம்	முழு விஸ்தீரணம் (ஹெக்)	ஆக்கிரமிப்பு புரப்பு	குறியீடு
121/1A	இரயத்து புன்செய்	1.64.5	444 ச.மீ	நிலவியல் பாதையில் தென்னை மரம் வைத்து



W.P(MD)No.12006 of 2024

				ஆக்கிரமிப்பு செய்யப்பட்டுள்ளது.
119	திரைத்து புள்ளெய்	1.84.5	395 சமீ	நிலைப்பல் பானத்தில் மக்காச்சோளம் பயிரிடும் ஆக்கிரமிப்பு செய்யப்பட்டுள்ளது.
94/1 94/2	திரைத்து புள்ளெய்	0.77.5 1.21.5	395 சமீ	நிலைப்பல் பானத்தில் கம்பி போலி அமைத்து ஆக்கிரமிப்பு செய்யப்பட்டுள்ளது.
86	திரைத்து புள்ளெய்	1.29.5	185 சமீ	நிலைப்பல் பானத்தில் SAV கோலாக் நிழலாத்தாள் கோலாக் பிராண்ட் அமைத்து ஆக்கிரமிப்பு செய்யப்பட்டுள்ளது.
87	திரைத்து புள்ளெய்	1.54.0	428 சமீ	நிலைப்பல் பானத்தில் SAV கோலாக் நிழலாத்தாள் கோலாக் பிராண்ட் அமைத்து ஆக்கிரமிப்பு செய்யப்பட்டுள்ளது.

மேற்படி ஆக்கிரமிப்பின் அகற்றுவது தொடர்பாக ஆக்கிரமிப்புள்ளார்களான திருமுன்குடி அய்யன், திருமதி சுமீதார் ரீதி, திரு. பக்கீரம்மன் ராஜதேவி, திருவாளர். மோகன் பிவிவின் என்பவர்கள் (SAY) கோவார் பிளாண்ட் ஆகியோர்களுக்கு மான்வை-3 மற்றும் 4-ம் வகுப்புகள் அறிவிப்புகள் சார்பு செய்யப்பட்டு உரிய கால அளவாக வறும்பட்டும் ஆக்கிரமிப்பாளர்களாய் ஆக்கிரமிப்பு அகற்றப்படாததால் பார்வை 5 இல் கண்டனம் ஆக்கிரமிப்பை அகற்றி இறுதி உத்தரவு பிறப்பிக்கப்பட்டது. இந்நிலையில் திரு. அப்துல் முமீன் த/மெ. உ/பெயர். பக்கீரம்மன் என்பவர் தூத்துக்குடி மான்வை-3 ஆட்சிப் பகுதிக்கு மேல்முறையிடு செய்துள்ளார். மேற்படி மேல்முறையிடு மனு நியுனையில் உள்ளது. இத்துடன் புலப்பட நடை இடைக்காலத்தின் போது என்ற விவரத்தை புகாரில் தெரிவித்துக் கொள்கிறேன்.

(ஓம்)செ.நாகரஹன்
வட்டாட்சியர்
கயத்தாழ்

வட்டாட்சியருக்காக
கயத்தூறு

/ 九 五 五 /



W.P(MD)No.12006 of 2024

WEB COPY

10.Relying upon this communication of the Tahsildar, the learned Special Government Pleader would submit that continuously in six survey numbers at least, the encroachment had been found by the revenue authorities and all through these six survey numbers there has been a cart track running. Therefore, action had been taken by the revenue authorities by invoking the provisions of Act, 3 of 1905 and notice had been issued followed by Section 6 order and all those orders have become final as that has not been questioned by the petitioner and despite Section 6 order, since the petitioner has not come forward to remove the encroachment, the Tahsildar had issued the present impugned order, dated 29.05.2024 and even the last chance given to him to remove the encroachment till yesterday since has not been complied with, the revenue authorities may be permitted to proceed further to execute the order to remove such encroachments. Hence, the present attempt made by the petitioner is without any basis and the Section 6 order since has not been questioned and has become final, the present appeal said to have been made to the first respondent/the District Collector against the order, dated 29.05.2024, which is only a consequential proceeding to execute the order under Section 6 of the Act would no way preclude the revenue authorities from proceeding



W.P(MD)No.12006 of 2024

WEB COPY

further pursuant to the impugned order. Therefore, the learned Government Pleader seeks indulgence of this Court to dismiss the Writ Petition.

11.Mr.Aayiram K.Selvakumar, learned counsel made submissions before this Court representing the said M.Guruputhiran, as he is not a party here, only at whose instance in the earlier Writ Petition, the Division Bench passed the said order, pursuant to which only, all these actions have been taken by the revenue authorities by invoking the provisions of Act, 3 of 1905.

12.We have considered the said rival submissions made by the learned counsel appearing for both sides and we have perused the materials placed before this Court.

13.Admittedly, the Section 6 order was passed on 21.02.2024 by the third respondent/the Tahsildar, which has not been questioned by the petitioner, therefore, it has become final. Under Section 10 of the Tamil Nadu Land Encroachment Act, 1905, an appeal would lie before the District Collector under Section 10 of the Act, only against the order passed by the revenue Tahsildar under Section 6 of the Act. Here, the said Section 6 order



W.P(MD)No.12006 of 2024

has not been questioned in the appeal, which seems to have been filed on 05.06.2024 by the petitioner.

14.Be that as it may, now an appeal has been filed under Section 10A(a) of the said Act on 05.06.2024 and the said appeal since has been filed only two days back, it cannot be expected that the Collector would have bestowed his consideration on that appeal to dispose of the same.

15.However, the petitioner in order to thwart the attempt made by the revenue authorities to execute their order passed under Section 6, of course, in pursuance of the direction given by this Court, this dual method has been adopted by filing an appeal before the District Collector and now the very same order, dated 29.05.2024, has been questioned in this Writ Petition. The petitioner cannot ride on two horses at a time. If at all he has chosen to file an appeal against the order, dated 29.05.2024, before the District Collector and he has filed such an appeal on 05.06.2024, he must pursue only the said appeal and he should not have filed this Writ Petition.



W.P(MD)No.12006 of 2024

WEB COPY

16.Since the appeal has already been filed, even though not against the order dated 21.02.2024 passed under Section 6 of the Act, but only against the consequential order, dated 29.05.2024, we deem it appropriate to give a direction to the District Collector to dispose of the said appeal at the earliest preferably within a period of two weeks.

17.While deciding the said appeal, the first respondent/the District Collector must take into account the report submitted by the Tahsildar with regard to the existence of the cart track and the encroachment that is found in various survey numbers in the said cart track. Accordingly, a decision on merits shall be taken by the District Collector on the appeal, dated 05.06.2024 made by the petitioner and such decision shall be made and orders to be passed by the first respondent/the District Collector within a period of two weeks from the date of receipt of a copy of this order. Till such order is passed by the first respondent/the District Collector, the present impugned order, dated 29.05.2024 passed by the third respondent, shall be kept in abeyance. Once the order is passed by the District Collector, accordingly, the third respondent/the Tahsildar can act upon.

10/12



W.P(MD)No.12006 of 2024

WEB COPY

18.With these observations and directions, this Writ Petition is disposed of.

However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

[R.S.K.,J.] [G.A.M.,J.]
07.06.2024

NCC : Yes / No
Index : Yes / No
ps

To

- 1.The District Collector,
Collectorate Campus,
Thoothukudi,
Thoothukudi District.
- 2.The Revenue Divisional Officer,
Kovilpatti,
Thoothukudi District.
- 3.The Tahsildar,
Kayathar,
Thoothukudi District.



WEB COPY



W.P(MD)No.12006 of 2024

R.SURESH KUMAR,J.
and
G.ARUL MURUGAN,J.

ps

ORDER MADE IN
W.P(MD)No.12006 of 2024

DATED : 07.06.2024

12/12