(4)

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Abstract

Encroachment - Formation of Secretary Level Committees to dispose the grievances relating to the eviction of encroachment in Government land - Directions of High Court of Madras in Writ Petition No.12821 of 2015 - Implementation of the orders of High Court of Madras - Orders - Issued.

Revenue and Disaster Management Department, LD WING, LD-6 (2) Section

G.O.(Ms) No: 269

Dated 23.08.2017
ஹேவிளம்பி வருடம், ஆவணி 7
திருவள்ளுவர் ஆண்டு 2048

Read:

1. Orders of High Court of Madras in W.P.No.12821/2015, dated 28.4.2015 and 19.6.2015.
2. Government D.O. letter No.17332/LD6(2)/2015-4, dated 9.7.2015.
3. From the Additional Chief Secretary and Commissioner of Land Administration Letter No.T2/17247/2015, dated 15.12.2015.

****

ORDER:

The Hon'ble High Court, Madras, in its order dated 19.6.2015 in W.P.No.12821/2015, filed by Tmt.Kaliammal has ordered as follows:-

".....The compliance report shows that all encroachments have been removed on 14.05.2015 and disciplinary action has been initiated against defaulting officers. The disciplinary proceedings be concluded at the earliest and in accordance with law.

2. We may observe that the Tamil Nadu Land Encroachment Act, 1905, may require a re-look keeping in mind the enormity and complexity of the problem faced now, as compared to the position prevalant hundred and ten years ago. It may be, thus, worthwhile for the Government to have such a re-look to strengthen the provisions.

3. We, thus, recommend that the State Government should re-look the provisions of the Act to make it more meaningfully enforceable.

2. In the reference second read above, the Additional Chief Secretary / Commissioner of Land Administration has been requested to send the remarks on the orders of the High Court in W.P No.12821 of 2015 dated 28.4.2015 and 19.6.2015.

3. In the reference third read above, the Additional Chief Secretary / Commissioner of Land Administration has made some suggestion in order to strengthen

p.t.o

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the provisions of the Tamil Nadu Land Encroachment Act, 1905 (Tamil Nadu Act III of 1905) and to make it more enforceable and has also suggested that those suggestions may be discussed and suitable amendments to the said Act may be drafted by forming a Secretary Level Committee with Revenue, Public Works, Highways and Minor Ports and Law Departments which could then be vetted through the Advocate General before finalization as similar amendments could also be made to other Acts under the administrative control of the said departments which provide for removal of encroachments.

4. The Government have carefully examined the proposal of the Additional Chief Secretary / Commissioner of Land Administration and accordingly hereby constitute a Secretary Level Committee with the following members to discuss the suggestions put forth by the Commissioner of Land Administration in the reference third read above and to prepare suitable draft amendments to the Tamil Nadu Land Encroachment
Act, 1905:-

1. Secretary, Revenue - Chairman
2. Principal Secretary, Public Works Department - Member
3. Additional Chief Secretary, Highways & Minor Ports - Member
4. Secretary, Law - Member
5. Additional Chief Secretary / Commissioner of Land Administration - Convenor & Member- Secretary

The Committee will meet at least once in a month or earlier, if the need arises. The draft amendment to the said Act prepared by the committee shall be sent to the Advocate General of Tamil Nadu for obtaining his legal opinion.

5. The Public Works Department and the Highways & Minor Ports Department are requested to make similar amendments in the other Acts under their administrative control which provide for removal of encroachments.

(BY ORDER OF THE GOVERNOR)

CHANDRA MOHAN. B,
SECRETARY TO GOVERNMENT

To
The Additional Chief Secretary/Commissioner of Land Administration,
Chepauk, Chennai-5.
All District Collectors.

Copy to
The Finance Department, Chennai-9.
The Highways and Minor Ports Department, Chennai-9.
The Public Works Department, Chennai-9.
The Law Department, Chennai-9.
Stock file /Spare copy.

//Forwarded by Order//

Section Officer

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.08.2014

Coram:

The Honourable Mr.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
The Honourable Mr.Justice M.SATHYANARAYANAN

Writ Petition No.25722 of 2013
and M.P.No.1 of 2013

U.A.Marrappa Gounder ... Petitioner

Versus

1. The District Collector
Erode District
Erode.

2.The Revenue Divisional Officer
Gobichettipalayam
Erode District.

3.The Revenue Thasildar
Gobichettipalayam, Erode District.

4.The President
Modachur Village Panchayat
Gobichettipalayam Taluk
Erode District.

5.Mani @ Gundumani
6.K.Arukutti @ Arumugam
7.A.Palanisamy
8.K.Vadivel
9.C.Selvaraj
10.V.Kumarasamy Gounder
11.P.Subramaniyam
12.Balasubramaniyam ... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issue of a writ of Mandamus, directing the respondents 1 to 3 to remove the encroachment caused by the respondents 5 to 12 over the public cart track existing in Survey Nos.298/3, 299/3, 267/5, 266/5, 272/1 and 281/1, situated at Modachur Village, Gopichettipalayam Taluk, Erode District within a time frame.

For petitioner ::: Mr. A.V.Raja

For Respondents ::: Mr.P.H.Arvind Pandian AAG
assisted by Mr.STS.Moorthy GP
for RR 1 to 4.
Mr.A.V.Arun for RR 5 to 9
No appearance for RR 10,11 and 12.

O R D E R

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

The petitioner having purchased 3.38 acres of land in the year 1980, classified as New S.No.299/2, Old S.No.315 situated on the Modachur Village, Gopichettipalayam Taluk, Erode District, is aggrieved by his easement right in the 15 feet width cart track stated to be available on the southern side of his land. It is the say of the petitioner that respondent Nos. 5 to 12 are encroaching upon the cart track and have closed the access by using other land owners who had easement rights in the cart track.

2. The stand of the second respondent reflected in their affidavit is that the cart track is lying through patta lands and sub-divided as 298/3, 299/3, 267/5, 266/5, 272/1 and 281/1 and registered as Boosthuthi Cart Track in Village records and also they are Patta lands. However, there is stated to be no cart track in the above fields. The recent pattaders are stated to have demolished the cart track and merged with their patta land for use of cultivation. With result, the pattaders of S.F.No.299, 298 and other surrounding areas are not able to use the cart track causing hardship. This in turn has resulted in civil proceeding before the District Munsif Court, Gobichettipalayam, regarding the right of pathway of the above said land, where private respondent Nos.5 to 12 before us are stated to be restrained from locking the cart track. The revenue authorities are stated to have taken necessary action in pursuance thereto. In order to execute the decree stated to have been passed on 27.09.1979, 12.11.1981 and 09.04.1996, execution petitions are stated to be the appropriate remedy.

3. The learned counsel for the petitioner, on the other hand, contend that the cart track could have only existed on Government lands and thus there is a duty cast on the authority under the Tamilnadu Land Encroachment Act, 1905. The moot point, however remains, as to whether the cart track lands are government lands or not? Unfortunately, for the petitioner, the stand of the Government is that the same do not form part of the government land, but a private patta land which at some stage has been used for cart track and thus the only remedy for the petitioner is through enforcement of civil proceedings, if he claims easementary rights.

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4. In our view, this issue cannot be determined in this Public Interest Litigation and we have to necessarily relegate the petitioner to the civil remedy, if he so chooses.

5. Before parting with the matter, we are constrained to observe that large part of the PIL arising before this Court are from allegations of encroachments on Government lands, water ways, public streets, unauthorised constructions, etc.,. These are really matters for civil authorities and revenue authorities to take care of. The State Government must set forth a mechanism where aggrieved persons can complain and remedial action can be taken. Promptly, they are called upon to do so. We have thus requested the learned Government Pleader to enter appearance in this matter and to obtain instructions from the State Government, in what manner such an authority be set up, due publicity given to the authorities where aggrieved persons would be first required to make their representations and a remedial action and reasoned response be communicated within a period of 30 days from such complaint being made. Once such a mechanism is set up, there would be no occasion to entertain a PIL on the first instance in such matters as an administrative machinery would be available for remedying the position.

6. The learned Government Pleader requests for some time to file an affidavit to set forth such a mechanism in place. The needful be done within a period of two weeks.

7. The writ petition stands disposed of with the aforesaid directions. Consequantly, connected miscellaneous petition is closed. No costs.

List for compliance on 27.08.2014.

A Copy of the order be marked to the Chief Secretary, Government of Tamil Nadu.

Sd/-
Assistant Registrar(CS-III)
Dated:19.08.2014

19/8/14

//True Copy//

Sub Assistant Registrar

To,

1.The District Collector,
Erode District,
Erode.

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2.The Revenue Divisional Officer,
Gobichettipalayam, ERode.

3.The Revenue Tahsildar,
Gobichettipalayam, ERode.

4.The President,
Modachur Village Panchayat
Gobichettipalayam Taluk
Erode District.

5.The Sub Assistant Registrar (A.S)
Judicial, High Court, Madras.

Copy to:

1. The Chief Secretary to Government
Fort St.George, Chennai 600009.

2.The Secretary to Government
Municipal Administration Department
Fort St.George, Chennai 600009.

3.The Secretary to Government
Home Department
Fort St.George, Chennai 600009.

4.The Director General of Police
Dr.Radhakrishnan Salai,
Mylapore,
Chennai 600004.

5.The Commissioner of Police
Greater Chennai City,
Egmore, Chennai 600008.

6.The Commissioner
Corporation of Chennai
Rippon Buildings, Chennai 600003.

7.The Commissioner
Hindu Religious and Charitable Endowment Board,
Nungambakkam, Chennai 600034.

JUDICATURE MADRAS

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3.The Chairman/Managing Director,
Tamilnadu Generation and
Distribution Corporation Ltd.,
No.144, Annasalai, Chennai 600002.

+2 cc to Mr.A.V.Raja,Advocate,SR.36107

+1 cc to Mr.A.V.Arun,Advocate,SR.36612.

+1 cc to the Government Pleader,SR.36346.

dm(co)
krd 19/8

W.P.No.26722 of 2013

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