

**B. Moorthy and Others Vs. State of Tamil Nadu and Others**

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**Court :** Chennai

**Decided On :** Jan-04-2016

**Judge :** C.S. Karnan

**Appeal No. :** W.P.Nos. 37722, 37723, 37724, 37725, 37726, 37727, 37728, 37729, 37730, 37731 & 37732 of 2007 & M.P.No. 1 of 2007

**Appellant :** B. Moorthy and Others

**Respondent :** State of Tamil Nadu and Others

**Judgement :**

(Prayer: Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the third respondent in his Na.Ka.No.13500/2007/F1 dated 10.12.2007 issued to the petitioner under Section 362 of the Tamil Nadu District Municipalities Act, 1920, quash the same and forbear the respondents from dispossessing, evicting and demolishing the petitioner's house in Old Survey No.74/B2, New No.13, Korattur Village, Ambattur Town, Chennai " 600 053.)

1. The petitioner states that since 1947 onwards, the lands in Survey No.74 of Korattur Village, Ambattur Taluk of the then Chingleput District were utilized for agricultural operations by various persons. He states that the said lands were classified as Odai Poramboke in the Revenue records. He states that in the year 1967, beam notices evidencing the enjoyment of the respective landholders were

issued by the Revenue Department. He states that between 1987 and 1994 various persons purchased the said lands from the persons who were in enjoyment of the said lands under registered sale deeds registered by the Sub Registrar Office, Thirumangalam, Chennai. He states that invariably the lands were purchased only for the construction of houses and the extent of lands purchased by the said persons varied between 900 and 1200 square feet. He states that subsequent to the purchase of the said plots, most of the persons had constructed their own dwelling houses by spending their life saving amounts and also by borrowing loans from Banks and other financial institutions. He states that it is more than 20 years since most of the persons purchased the said lands and constructed the houses.

2. The petitioner further states that he is one of those persons who purchased an extent of 1320 sq. feet in Survey No.74/B2D of Korattur Village under registered sale deed dated 30.11.2001 from Mrs.Thangam and Mr.Thamizhvanan. True copy of the said sale deed under which he purchased the aforesaid land is annexed hereto. He states that the land purchased by him were assigned to his vendors under Assignment Order dated 30.09.1991 by the Special Tahsildar, Saidapet and Collector of Kancheepuram since his vendors were legal representatives of Army personnel. He states that by order dated 18.10.2004 the building plan for his house was approved by the third respondent Municipality. True copy of which is annexed hereto with planning permit. True copy of the Assignment Order dated 23.03.1990 issued by the Collector of Kancheepuram to his vendor is also annexed hereto.

3. The petitioner further states that after the construction of the house, the petitioner and his family members were peacefully living in the said house for the past 15 years. He states that the Special Tahsildar, Town Survey Final Audit Section of Ambattur Municipality after due inspection and survey, classified the part of Survey No.74 i.e. Survey No.74/B2 to an extent of 0.211.0 hectares as gramamattam. He states that this classification was duly entered in the Town Survey Land Register maintained by the Town Survey Final Audit Register. He states that the first respondent also issued G.O.Ms.No.854 dated 30.12.2006 with various instructions, true copy of which is annexed hereto. He states that in

particular, the following instructions were issued in the said G.O.Ms.No.854 dated 30.12.2006 are very relevant:-

(a) In order to regularise the unauthorised construction in which persons were residing more than 10 years, guidelines were issued by relaxing the rules in the following manner for the purpose of granting patta for the said lands within six months from January 2007.

(b) The lands which were described as Nattam Poramboke which is not put to use (by the respective Municipality, Major Panchayat and Minor Panchayat) in which the persons have constructed houses and are in enjoyment for more than 10 years can be inspected by the District Collector and other officers on merit basis and patta can be regularised.

(c) The lands which were classified as Odai Poramboke must be inspected by the said committee presided over by the District Collector before regularisation. The scheme is called one time scheme.

4. The petitioner further states that pursuant to the said G.O.Ms.No.854 dated 30.12.2006 issued by the first respondent, he submitted an application before the second respondent, the Collector of Tiruvallur in March 2007 when he came to Jamabandhi at Ambattur Taluk Office praying to grant patta in respect of the lands purchased by him over which he has constructed the house in the format, copy of which is annexed hereto. He states that in as much as his case squarely falls within the guidelines issued by the first respondent in G.O.Ms.No.854 dated 30.12.2006. He was expecting the second respondent to inspect his land in terms of the aforesaid G.O. and grant patta. However, there was no response whatsoever from the second respondent till date in respect of the application preferred by him during March, 2007 praying to grant patta in terms of G.O.Ms.No.854 dated 30.12.2006.

5. The petitioner further states that during September, 2007 the fourth respondent who was having an entrance to their Firm in Madras-Tiruvallur High Road closed the entrance and opened a new entrance in the 100 feet road, in as much as a new fly over near the Wheels India Limited signal constructed affected the

appearance to the said Firm. He states that while constructing the new entrance, the fourth respondent constructed an over-bridge for movement of heavy vehicles blocking the free flow of drainage water through 100 feet road canal which was flowing towards Anna Nagar West Bus Depot. He states that because of the blockage of water through 100 feet road, the said drainage water was diverted to Thattankuppam, Iyyappa Nagar and SRP Nagar etc. He states that in fact on 16.11.2007, the third respondent sent a communication to the Inspector of Police, Rajamangalam Police Station, Rajamangalam, requesting him to provide police protection for the purpose of removing the encroachments in Korattur village, Survey No.74 water canal poramboke. True copy of the said communication sent by the third respondent to the Inspector of Police, Rajamangalam Police Station, Rajamangalam is annexed hereto. He states that at that stage, one Sam Marbles and Granites at No.20, 200 Feet Road, Kolathur, Chennai “ 600 099 filed writ petition before this Court and obtained interim orders.

6. The petitioner further states that after the above interim order was passed by this Court, the third respondent, instead of approaching this Court and getting the interim order vacated, in order to make it appear as though that the water blockage problem can be solved only by laying a new canal through the lands purchased by the petitioners under political pressure started sending messages to him and other residents of Iyyappa Nagar, Korattur, Ambattur Municipality stating that the new canal for drainage water and rain water has to be laid through their lands. Immediately on 25.11.2007, on behalf of Iyyappanagar Residents Welfare Association, a general body meeting was held in which a resolution was passed incorporating the true state of affairs, copy of which also was sent to the first respondent. He states that in the said resolution, the Association has clearly pointed out that the drainage water from Ambattur Estate, Attipet, Korattur Housing Board, Korattur Milk Society and Lucas TVS Company has been flowing through from time immemorial adjacent to the railway path proceeding to Villivakkam from Korattur along 100 feet road through Wheels India Limited and Lucas TVS Company and reaching Nalla Kalvai near Anna Nagar West Bus Depot. However, recently i.e., a few weeks back, Wheels India Limited have blocked the free flow of the water by laying a new entrance on their eastern side by constructing a bridge for passage of heavy vehicles and thereby diverted the

water through 100 feet road because of which the drainage water reached Iyyappanagar, SRP Nagar area. He states that Dinamalar ?, Tamil Newspaper in their Chennai Edition dated 13.12.2007 and The Hindu have reported with a photograph about the stagnation of drainage water around 4<sup>th</sup> ward of Ambattur. True copy of the news item which appeared in Dinamalar and The Hindu are annexed hereto. He states that thereafter on 28.11.2007, the residents of Iyyappanagar came to know about the conduct of the fourth respondent and the third respondent's attempt to disturb their possession, on their behalf, a registered lawyer's notice was sent to the third respondent on 28.11.2007 under Section 5 of the Right to Information Act, 2005 praying to furnish a copy of the approved plan in respect of the canal for the drainage water from Korattur via Wheels India Limited to Rettaiari. However, till date, the third respondent has not responded to the said lawyer's notice sent on their behalf. He has annexed hereto the relevant photographs to show the existing passage of the rain water canal.

7. The petitioner further states that to his shock and surprise, the third respondent has now issued the impugned notice dated 10.12.2007 which was received by him only on 13.12.2007 purporting to be one under Section 362 of the Tamil Nadu District Municipalities Act, 1920. He states that the impugned notice issued by the third respondent states that he has constructed a building in Survey No.74/B2 of Korattur Village over the drainage canal and that unless he removed the said unauthorised construction within 15 days, the third respondent would invoke the powers under Section 362 of the Tamil Nadu District Municipalities Act and also recover the expenses under Sections 340 and 344 of the said Act. Section 362 of the Tamil Nadu District Municipalities Act reads as hereunder:-

362. Prohibition against unauthorised dealings with public place or materials. - No person shall, without authority on their behalf, remove earth, sand or other material or deposit any matter or make any encroachment from, in or on any land vested in the municipal council, or river, estuary, canal, backwater or water-course (not being private property) or in any way obstruct the same. ?

8. The petitioner further states that a perusal of the impugned notice by the third respondent under Section 362 of the Tamil Nadu District Municipalities Act, 1920,

clearly shows that the third respondent is proceeding on the footing that he has encroached into the rain water canal in Survey No.74/B2 of Korattur Village and has put up construction over the said land. In other words, the third respondent is proceeding on the footing that the portion of the alleged canal has been vested in the third respondent Municipal Council. He states that as regards the drainage or culvert in any Municipality, the Division Bench of this Court in the case reported in 1986 Writ Law Reporter, Page-89, the Government of Tamil Nadu Vs. The Chingleput Dravidar Kazhagam has held that under the provisions of the Tamil Nadu District Municipalities Act, the vesting of public streets under Section 61 of the Act, in the Municipal Council do not have the effect of conferring absolute rights thereof on the Municipal Council and the vesting is only for a limited extent and for a specified purpose of maintenance, repairs and improvement of streets. It is not general absolute right that gets vested in the Municipal Council for it to deal with it as absolute owner thereof. It is only with the sanction of the State Government who is the owner of the site and soil that the Municipality can initiate any action.

9. The petitioner further states that in a recent Full Bench Judgment of this Court reported in 2005 (2) CTC 741 Ramaraju Vs. State of Tamil Nadu, the Full Bench of this Court has clearly held that if the encroachment is on the land belonging to local authorities but such land is not part of the road or road margin or road side land, eviction can be effected by following the procedure under the Tamil Nadu Public Premises (Eviction of unauthorized occupants) Act, 1975 or any other law applicable or otherwise by taking reports to civil courts and not by the use of unilateral courts. In the very same judgment, this Court further held that if the encroachment is on the land belonging to the Government concerned, eviction can be resorted to only by the appropriate authority and by following the procedure contemplated under the Tamil Nadu Land Encroachment Act, 1905. He states that the facts stated about would clearly establish that his land about which reference has been made in the impugned notice have been classified as Odai Poramboke in the Revenue records and in the said circumstances, these lands have not been vested under Section 61 of the Tamil Nadu District Municipalities Act in the third respondent and hence as per the rulings of the Full Bench of this Court referred to above, assuming without admitting there was any encroachment only the

appropriate authority by following the procedure under the Tamil Nadu Land Encroachment Act, 1905 can initiate action for eviction. He states that assuming without admitting that even this Odai Poramboke belongs to the third respondent since the said land is not part of the road or road margin or road side lands, eviction can be ordered only by following the procedure under the Tamil Nadu Public Premises (Eviction of unauthorised occupants) Act, 1975 or by taking records to civil courts and not by the use of unilateral Courts.

10. The petitioner further states that in the last 20 years or since when he constructed the house, the third respondent has not issued any such notice. He states that it is only suddenly because of the extraneous consideration and arbitrarily without even considering their application for grant of patta which is pending before the second respondent pursuant to the G.O. issued by the first respondent, the third respondent has threatened to invoke the drastic powers under Section 362 of the Tamil Nadu District Municipalities Act which is arbitrary, illegal and violative of Article 14 of the Constitution of India.

11. The learned counsel Mr.M.Mohammed Shafi, appearing for the petitioner submits that the subject land originally was utilized for agricultural operations. Subsequently, the occupants were issued Beam notice by the Revenue Department. Knowing that various persons have purchased the lands under a registered sale deed which has been registered on the file of Sub Registrar's office, Thirumangalam, Chennai for the purpose of construction of houses. The said alienation to an extent of 900 to 1200 sq. ft. on each portion. The petitioner after constructing the house is enjoying the same without any interference as of now. The vendors of the petitioner are sole legal representatives of army personnel, who had been assigned the said land by the Revenue authorities including the top officer of Kancheepuram District namely the Collector. The petitioner had obtained building plan from the competent authority namely the Ambathur Municipality. Under these circumstances, the Special Tahsildar attached to the Ambathur Municipality inspected the petitioner's house and informed the petitioner that the subject land has been classified as Natham Poramboke.

12. The highly competent counsel further submits that the first respondent, the Secretary attached to the Revenue Department had issued a G.O.Ms.No.854 dated 30.12.2006 wherein it reveals that if any person residing more than 10 years in an authorized construction, he is entitled to receive patta. As per the G.O. the impugned notice is not fit to be operated upon. The petitioner also made necessary application before the District Collector, Thiruvallur to grant patta, the same was not considered so far. Further, the said construction of the petitioner is not disturbing the movement of heavy vehicles or blocking the free flow of drainage water. Under these circumstances, the Commissioner attached to the Ambathur Municipality had sent a communication to the Inspector of Police, Rajamangalam Police Station requesting him to provide Police protection for the purpose of removing the encroachment comprised in Survey No.44 situated at Korattur Village. Thereafter, the residence of Iyyappa Nagar had conducted an emergency meeting and passed a resolution, the same sent to the first respondent stating that the drainage water from the Ambathur Estate has been flowing from time memorial adjacent to the Railway path proceeding to Villivakkam from Korattur along the 100 feet road, through Wheels India Limited. As such, the occupation portion of the petitioner is not disturbing the general public in any way. Under these circumstances, the third and fourth respondents are attempting to disturb the residences of the area. The petitioner also sent a legal notice and disclosed the factual position and rights of the petitioner. Now, the third respondent had issued an eviction notice to the petitioner without conducting an enquiry. Further, the respondents had attempted to operate state machinery to evict the poor residents from their respective occupation portion which is violating article 14 of the Constitution of India.

13. The learned counsel further submits that the Taluk Tahsildar had issued enjoyment certificate wherein, it is mentioned that the petitioner is enjoying the said property for the past several years, therefore, the Tahsildar has no objection in securing electricity service connection, plan, loan, etc. from any authority. Therefore, the petitioner's occupation is a lawful possession. The Statutory authority namely third respondent herein is collecting mandatory taxes periodically from the petitioner. The petitioner also obtained approved plan from the Chennai Metropolitan Development Authority and third respondent herein. Therefore, the

petitioner's possession cannot be disturbed by way of operating eviction.

14. The learned counsel has cited Judgments reported in Government of Tamil Nadu V. Chingleput Dravidar Kazhagam (D.B-Nainar Sundaram, J.)

Tamil Nadu District Municipalities Act (2 of 1920), Ss.61, 36, 67 and 162 to 164 and words and phrases - vesting, meaning of - public streets, vesting of, in Municipal Councils, for purposes of maintenance, etc., - right of the State Government as the owner of the site and soil - No absolute rights to the Municipal Councils in the public streets - Erection of a statue in a public street - right of the State Government to control, as the sovereign owner - Scope.

- do- Right of the Municipalities to maintain a public street does not extend to erecting a statue thereon by the Municipal Council by itself or through some other agency - State, as the Sovereign owner of the public streets, must be consulted and its sanction must be obtained - no power to the Municipal Council under the statute in this regard.

15. The learned counsel has cited Judgments reported in 2005 (2) CTC 741 in Ramaraju S/o N.A.Subbaraja v. The State of Tamil Nadu, rep by its Secretary to Government, Revenue Department, Fort St. George, Chennai and others.

Tamil Nadu District Municipalities Act, 1920, Sections 61(1), 182, 183 - Removal of encroachment from Roads and public streets - there cannot be blanket directions for removal of encroachment without following due process of law - encroachment on road or road margins vested in municipalities can be removed only after following procedure contained in Chapter IX of Tamil Nadu District Municipalities Act and more particularly provisions contained in Section 182 and 183 (6) - Municipalities before taking action under Section 182 should issue notice in writing giving at least two weeks time to encroachers to remove encroachments - If encroacher avoids to receive notice, such notice can be effected by affixture - notice by any other means such as through public announcement or beating of drums or by general notice in newspapers may not be sufficient. (Para 38(1))

Tamil Nadu District Municipalities Act, 1920, Sections 61(1), 182, 183 - Statutory power of Municipal Council to grant License to put up varandas, balconies, sunshades, weather frames etc. - Municipal Council has got power to grant License to put up varandas, balconies, sunshades, weather frames and the like as also power to lease road sides and street margins for occupation on such terms and conditions and for such period as the Council may fix - However, such power has to be exercised keeping in view provisions contained in Section 183(4) and no license under Section 183(1) or lease under Section 183(3) should be granted if projection, construction or occupation is likely to be injurious to health or cause public inconvenience or otherwise materially interfere with the use of road as such - Projections or construction put up under Section 183(1) or (2) can be removed on expiry of Licence or Lease - Compensation is required to be paid in matters coming within scope of Section 182(2). (Para 38(2))

Tamil Nadu District Municipalities Act, 1920 - Unauthorised Encroachment - Payment of Property Tax, Water Tax or Electricity Charges - Payment of Property Tax, Water Tax or Electricity Charges - Payment of Property Tax, Water Tax or provision of water connection or electricity cannot be construed as conferring any independent right to encroachment if such encroachment is unauthorized.

Tamil Nadu District Municipalities Act, 1920 - Removal of encroachment - Directions with reference to removal are also applicable to encroachment in respect of road and road margins coming within jurisdiction of Municipal Corporation or town and Village Panchayats - Necessary action can be taken by concerned authorities by following relevant provisions of Law applicable to Corporation or Panchayats.

National Highways Act, 1956 or Control of National Highways (Land and Traffic) Act, 2002 - Tamil Nadu Highways Act, 2001 - Unauthorised encroachment of National Highways and State Highways - Action can be taken for removal of encroachments by following procedure prescribed under National Highways Act, 1956 or Control of National Highways (Land and Traffic) Act, 2002 - similarly encroachments can be removed on State Highways by following provisions of Tamil Nadu Highways Act, 2001 - Unauthorised encroachments on land belonging

to Local authorities which does not form part of road, road margins or roadside land - In respect of such land eviction can be effected by following procedures prescribed under Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 or any other Law applicable or by taking recourse to Civil Courts - Eviction cannot be made by use of unilateral force. (Para 38(5 and 6))

Tamil Nadu Land Encroachment Act, 1905 - Government land - Encroachment on government land without authority or permission - Unauthorised encroachment on government land - Eviction can be taken by following procedure contemplated under Tamil Nadu Land Encroachment Act, 1905.

Tamil Nadu District Municipalities Act, 1920 - License granted by Local Authority or Municipality to Occupy roads or road margins - Decision in Writ Petition No.689 of 2005 is applicable only for removal of encroachment of roads and road margins and no other lands belonging to Local Authority or State - Decision in Writ Petition no.689 of 2005 should not be construed as giving License to Local Authority to cancel existing License or Lease and remove encroachment without following procedures contemplated under Law. (Para 38(8))

Code of Civil Procedure, 1908, Section 2(2) - Decree or Order of Civil Courts - In cases where Civil Courts has granted Decree or Interim Order restraining eviction of unauthorised occupants no action for eviction can be taken unless and until such Decree or Interim Order is set aside or vacated in manner known to Law. (Para 38(9))

16. The highly competent Additional Advocate General appearing for the first and second respondents submits that the entire land comprised in Survey No.74 situated Korattur Village is classified as "Odai Poramboke". The petitioner had purchased a portion of the land from unauthorized person under a registered sale deed. The erstwhile vendors did not possess valid title deeds to alienate the said property in favour of the petitioner, as such the said sale deed is not sustainable under law. On the strength of the said sale deed, if the Revenue authorities are attached to the third respondent office have issued any favourable orders to the petitioner, those orders are not valid since the property is absolutely belonging to the Government. The Revenue Authorities never issued any patta proceedings in

favour of the petitioner. Actually, the petitioner made a wrong entry on the strength of the sale deed executed by strangers the petitioner made wrong entry and constructed a house thereon, which is an illegal occupation. Therefore, the third respondent had issued an eviction notice. The petitioner cannot claim any civil rights as absolute owner of the property due to paying penalty to the Government for their illegal use and occupation.

17. The very competent Additional Advocate General further submits that on the strength of the Government Order issued by the first respondent is not applicable in the instant case, it will be applicable to Natham Poramboke lands. In order to evict the petitioner judicial order is not required since the impugned notice had been issued under the Municipality Act. The law also duly permits the eviction of the petitioner from his illegal occupation. Before issuing the impugned notice the respondents 2 and 3 and their subordinates had given advance order by writing and oral. Hence, the learned senior counsel entreats the Court to dismiss the above writ petition.

18. The highly competent counsel Mr.V.C.Chandrasekharan appearing for the third respondent and the very competent counsel Mr.N.Balasubramaniam, appearing for the 4th respondent have adopted the arguments advanced by the learned Additional Advocate General appearing for the 1st and 2nd respondents.

19. From the above discussion, the views of this Court are as under:

(1) The erstwhile vendor had executed a registered sale deed in favour of the petitioner which as per law is not valid since the vendors did not possess marketable title deeds to alienate the said property in favour of the petitioner. On the basis of the said sale deed the petitioner cannot claim any civil rights over the said property as absolute owner.

(2) If the plan is approved by the Chennai Metropolitan Development Authority for construction over the said land. This plan approval granted by the Chennai Metropolitan Development Authority is an erroneous view.

(3) The Taluk Tahsildar, attached to the Saidapet Taluk had issued an enjoyment certificate and not ownership certificate. Further, on the basis of the said certificate, if the Electricity Board has provided Electricity connection to the premises of the petitioner it is also of an arbitrary manner.

(4) Now in the recent unusual rains in the city and districts which affected the general public due to unauthorized occupation and encroachment of the water ways. The subject portion of the land classified as Odai Poramboke which is the equivalent to water ways and which brought about severe calamity in the recent past.

20. Considering the facts and circumstances of the case, arguments advanced by the highly competent counsels on all sides and on perusing the typedset of papers and the views of this Court as mentioned in (1) to (4) as above, the above writ petition does not possess sufficient force to allow it, hence it is not permitted, consequently, the impugned order of the third respondent is fit to be operated upon further.

21. In the result, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

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