



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.03.2015

CORAM:

THE HONOURABLE DR. JUSTICE S.TAMILVANAN

and

THE HONOURABLE MR. JUSTICE V.S.RAVI

W.P.(MD)No.3028 of 2014

and M.P.(MD)No.1 of 2014

1.W.Jebakumar
2.E.Subbulakshmi
3.A.Immaqulate
4.Esakkimuthu
5.Vesli Dharmaraj

...Petitioners

Vs.

1.The District Collector,
Tuticorin District, Tuticorin.

2.The Commissioner,
Tuticorin Municipality, Tuticorin.

3.Thangavel
4.Annamini
5.John
6.Sermadurai
7.Perumal
8.Bass
9.Michael
10.Anthoni
11.Vasanth
12.Rajasingsh
13.Nithya
14.Thangam

...Respondents

PRAYER: The Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 and 2 to remove the alleged unlawful encroachments made by the respondents 3 to 14 on the 30 feet public road in Ward - 4, Block - 49A, Town Survey No.5845/11, Vetrivelpuram, Tuticorin Town by considering the petitioners' petition dated 20.12.2013.

For Petitioners : Mr.S.K.Kadarkarai

For Respondents : Mr.A.K.Baskarapandian, Spl.G.P.for R1

Mr.Sajibino for R2

Mr.P.Venkatesan for R3 and R4

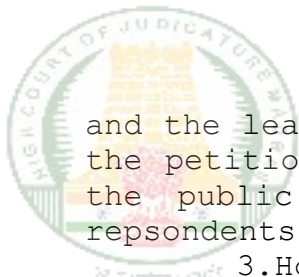
O R D E R

(Order of this Court was made by S.TAMILVANAN,J.)

The Writ petition has been filed under Article 226 of the Constitution of India, seeking an order in the nature of Writ of Mandamus, directing the respondents 1 and 2 to remove unlawful encroachments made by the respondents 3 to 14 herein on the 30 feet public road in Ward - 4, Block - 49A, Town Survey No.5845/11, Vetrivelpuram, Tuticorin Town by considering the petitioners' petition dated 20.12.2013.

<https://hcservices.ecourts.gov.in/hcservices/>

2.Heard the learned counsel appearing for the petitioners, the learned Special Government Pleader appearing for the first respondent,



and the learned counsel appearing for the other respondents. The case of the petitioner is that the respondents 3 to 14 have made encroachment on the public road and the said encroachment shall be removed by the respondents 1 and 2.

3. However, it is submitted on the side of the respondents 3 to 14 that the said respondents are residing in the land in question for more than 20 years and they are paying house tax to the local body and also having voter identity card, etc relating to the said address. It is further submitted that the respondents 3 to 14 filed a suit in O.S.Nos.132, 166 to 168 of 2013 on the file of the Principal District Munsif, Tuticorin, seeking information not to evict them without following due process of law and the suit were decreed accordingly.

4. Learned standing counsel appearing for the second respondent submitted that the respondents 3 to 14 could not be evicted since they got interim order from the civil court. The pertinent question to be decided is whether the respondents 3 to 14 have made any encroachment on the public road as alleged by the writ petitioner or whether the said respondents got any subsisting right in the property.

5. This Court dealing with writ jurisdiction, cannot go into the disputed question of fact as the same has to be established only by adducing proper evidence. As a suit has been filed by the respondents 3 to 14 against the authorities not to evict them except under due process of law, if need be the petitioners herein could implead themselves as parties into the said suits. It is not in dispute that there is interim injunction granted by a civil court, hence, the respondents 1 and 2 should take action against the petitioners only according to law. Hence, the respondents 1 and 2 are empowered to take action only as per law if there is any encroachment made by the respondents 3 to 14 after providing reasonable opportunity to the petitioners and the respondents 3 to 14 and others if any.

6. On the said facts and circumstances and the submissions made by both sides, we permit the petitioners to implead themselves as parties to the suits pending before the Civil court and if any such petition is filed by the petitioners, the Trial Court should entertain the same and implead them as party and provide reasonable opportunity after considering the submission and evidence by both the parties and decide according to law at an early date preferably within three months.

7. With the above observation, the Writ petition is dismissed. No costs. Consequently, connected M.P. is closed.

Sd/-

Assistant Registrar(Writs)

/True copy/

Sub Assistant Registrar

To

1. The District Collector, Tuticorin District, Tuticorin.

2. The Commissioner, Tuticorin Municipality, Tuticorin.

+1cc to Mr.S.Kadarkari, Advocate in SR.11877

+1cc to Mr.S.Ramasamy, Advocate in SR.11461

+1cc to the Special Government Pleader in SR.12080

W.P. (MD) No.3028 of 2014

10.03.2015