

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.11.2017

DELIVERED ON : 05.12.2017

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HON'BLE MR.JUSTICE N.SESHASAYEE

W.P.Nos.40245, 40246, 43646 to 43650 to 2016
and W.P.No.28090 of 2017

W.P.Nos.40245 and 40246 of 2016

Rangasamy .. Petitioner in W.P.No.40245/2016

Muthulakshmi .. Petitioner in W.P.No.40246/2016

Vs.

1.The District Collector,
Tirupur District, Tiruppur.

2.The District Revenue Officer,
Tirupur District, Tiruppur.

3.The Revenue Divisional Officer,
Dharapuram,
Tiruppur District.

4.The Commissioner,
Dharapuram Municipality,
Dharapuram, Tiruppur District. ..

Respondents

सत्यमेव जयते

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W.P.No.43646 to 43650 of 2016

Nagarajan .. Petitioner in W.P.No.43646/2016

P.Alagirisamy .. Petitioner in W.P.No.43647/2016

Chakkaravarthi .. Petitioner in W.P.No.43648/2016

E.Karthikeyan .. Petitioner in W.P.No.43649/2016

Ashok .. Petitioner in W.P.No.43650/2016

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Vs.

1.The District Collector,
Tirupur District, Tiruppur.

2.The District Revenue Officer,
Tirupur District, Tiruppur.

3.The Tahsildar,
Dharapuram Taluk,
Tiruppur District.

4.The Commissioner,
Dharapuram Municipality,
Dharapuram, Tiruppur District.

.. Respondents in
WP.43646/16 TO 43650/16

W.P.No.28090 of 2017

M.Karunakaran

Vs.

Petitioner

1.The District Collector,
Tirupur District.

2.The District Revenue Officer,
Tirupur District.

3.The Commissioner,
Dharapuram Municipality,
Dharapuram.

Respondents

Prayer in W.P.No.40245 of 2016: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of order in Na.Ka.No.5489/2015/F1 dated 25.10.2016 on the file of 4th respondent herein and quash the same and consequently direct the respondents to issue free house site patta to the petitioner's house situated at Door No.60/9, Kottapulipalayam Road, Dharapuram Town of Tiruppur District.

Prayer in W.P.No.40246 of 2016: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of order in Na.Ka.No.5489/2015/F1 dated 06.10.2016, signed on 07.10.2016, on the file of 4th respondent herein and quash the same and consequently direct the respondents to issue free house site patta to the petitioner's house situated at Door No.80/4, Kottapulipalayam Road, Dharapuram Town of Tiruppur District.

Prayer in W.P.No.43646 of 2016: Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of order in Na.Ka.No.5489/2015/F1 dated 14.12.2016, on the file of 4th respondent herein and quash the same and consequently direct

the respondents to issue free house site patta to the petitioner's house situated at Door No.10/9, Kottapulipalayam Road, Dharapuram Town of Tiruppur District.

Prayer in W.P.No.43647 of 2016: Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of order in Na.Ka.No.5489/2015/F1 dated 14.12.2016, on the file of 4th respondent herein and quash the same and consequently direct the respondents to issue free house site patta to the petitioner's house situated at Door No.58, Kottapulipalayam Road, Dharapuram Town of Tiruppur District.

Prayer in W.P.No.43648 of 2016: Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of order in Na.Ka.No.5489/2015/F1 dated 19.07.2016, on the file of 4th respondent herein and quash the same and consequently direct the respondents to issue free house site patta to the petitioner's house situated at Door No.59/20, Kottapulipalayam Road, Dharapuram Town of Tiruppur District.

Prayer in W.P.No.43649 of 2016: Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of order in Na.Ka.No.5489/2015/F1 dated 14.12.2016, on the file of 4th respondent herein and quash the same and consequently direct the respondents to issue free house site patta to the petitioner's house situated at Door No.77/9, Kottapulipalayam Road, Dharapuram Town of Tiruppur District.

Prayer in W.P.No.43650 of 2016: Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of order in Na.Ka.No.5489/2015/F1 dated 14.12.2016, on the file of 4th respondent herein and quash the same and consequently direct the respondents to issue free house site patta to the petitioner's house situated at Door No.81/3, Kottapulipalayam Road, Dharapuram Town of Tiruppur District.

Prayer in W.P.No.28090 of 2017: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the third respondent herein to implement the order dated 27.06.2016 in Na.Ka.No.12615/2015/A3 on the file of the 2nd respondent and remove all illegal encroachments in Ward No.6, Block No.21, Town S.No.67 in Dharapuram with a time frame.

For Petitioners

W.P.No.28090/2017 : Mr.K.Sudhakar

W.P.Nos.40245/2016 : Mr.T.Mohan

CO 40246/2016 for Mr.N.Ponraj

W.P.Nos.43646/2016 to: Mr.V.Vasanthakumar
43650/2016

For Respondents :Mr.A.N.Thambidurai,
Special Government Pleader for R1 to R3
in W.P.No.28090/2017,
40245 and 40246/2016

Mrs.M.E.Raniselvam,
Addl. Government Pleader for R1 to R3
in W.P.Nos.43646 to 43650/2016

Mr.P.Srinivas for R4 in all W.Ps.

C O M M O N O R D E R

M.SATHYANARAYANAN, J.

W.P.No.28090 of 2017 is filed as a Public Interest Litigation to implement the order of the District Revenue Officer, Dharapuram, Tiruppur District in Na.Ka.No.12615/2015/Aa3 dated 27.06.2016 by removing the encroachments in Ward No.6, Block No.21, Town S.No.67 in Dharapuram, within a time frame.

2. W.P.Nos.40245 and 40246, 43646 to 43650 of 2016 are filed by occupants and encroachers of certain extent of lands in T.S.No.67, Block No.21, Ward No.6 of Dharapuram Municipality, challenging the notice issued by the Commissioner of Dharapuram Municipality in Na.Ka.No.5489/2015/F1 dated 25.10.2016, under Section 182(1) of the Tamil Nadu District Municipalities Act, 1920, in and by which they were ordered to vacate from the premises/superstructures, which has been constructed by way of encroachment on road portion within 3 days from the receipt of notice, failing which action will be taken to remove the encroachments and recovery of cost.

3. Facts are intertwined and the issue involved and to be adjudicated is one and the same in all these writ petitions and therefore, all these writ petitions are disposed of by this common order.

4. W.P.No.28090 of 2017 is filed as a Public Interest Litigation and the petitioner therein, claims to be a social activist, would state that he made a request to the third respondent, namely Commissioner, Dharapuram Municipality for removal of encroachment in Ward No.6, Block No.21, Town S.No.67, Dharapuram and despite very many representations, no action has been taken so far and also pointed out that as per the proceedings of the second respondent/District Revenue Officer, Tiruppur District in Na.Ka.No.12615/2015/Aa3 dated 27.06.2016, a finding has been given that the said lands belongs to the third respondent and in the absence of any legal interdict/restraint order, the competent officer, namely the third respondent has to

follow the procedures contemplated under the Tamil Nadu District Municipalities Act, 1920 and to take further action and despite lapse of nearly one year and odd, the third respondent has failed to comply with the above said order of the second respondent dated 27.06.2016 and hence, prays for appropriate direction for removal of encroachments.

5. However, two encroachers, namely Rangasamy and Muthu Lakshmi had filed W.P.Nos.40245 and 40246 of 2016 respectively challenging the proceedings/notice issued by the fourth respondent, namely Commissioner of Dharapuram Municipality dated 25.10.2016 and 07.10.2016 respectively in Na.Ka.No.5489/2015/F1 issued under Section 182(1) of the Tamil Nadu District Municipalities Act, 1920.

6. The First Bench of this Court, having noted that certain Civil Suits are pending, pointed out the same to the learned counsel appearing for the petitioners and a submission was made that the Suits will be withdrawn so as to enable them to prosecute the writ petitions and taking note of the same, vide order dated 16.11.2016, directed the listing of the writ petitions on 22.11.2016 and on that day, notices were ordered and respective learned counsel for the respondents accepted notice and interim order was granted that "no action be taken qua the property of the petitioners till the disposal of the writ petitions" and the miscellaneous petitions filed for interim orders were disposed of accordingly and in the main writ petitions, the affidavits filed by the petitioners stating that O.S.No.210 of 2016 and 213 of 2016 on the file of the District Munsif, Dharapuram have been withdrawn, were taken on record and though submission was made for grant of patta, the First Bench was not inclined to give such direction and however, taking into consideration the limited aspect which prima facie disclose that if the houses of the petitioners are in line with the houses constructed in patta road, then the road can be widened only if the patta lands are also acquired and the Court also took cognizance of the fact that the petitioners are in occupation for more than 40 years and the encroachment is non-objectionable and not causing any traffic movement hazards and therefore, directed the fourth respondent to file a plan of the area showing where the houses of the petitioners are located and where the patta lands are located and whether they are in the same line and also directed to indicate whether there is a proposal for road widening and how that would be handled qua the patta lands.

7. The writ petitions were again listed on 12.12.2016 and the First Bench, observed that if the alignment of road is taken including the orange portion, the triangle area where the petitioners are located would be substantively required for road widening and it would be like a pyramid, the substantive base of which is cut leaving a small triangle at the top, but that is not the portion occupied by the petitioners and directed the listing of the matter on 21.12.2016 and on that day, the Commissioner of Dharapuram Municipality was directed to be present along with records and he was also imposed with cost.

The Writ Petitions were again listed on 22.12.2016 along with connected writ petitions in W.P.Nos.43646 to 43650 of 2016 and in the light of the interim order dated 22.11.2016 passed in W.P.Nos.40245 and 40246 of 2016 wherein some interim protection was given, made it clear that no such protection is available for any non-residential use and the Court, after perusal of the plan, found that the plan is stated to have been made 3 years ago and is yet to be approved and the patta land has still not been acquired and having taken note of the same, observed that there would be no purpose in disturbing the petitioners and therefore, called upon the Commissioner of Dharapuram Municipality to file a proper affidavit within three weeks and also withdrawn the order imposing cost on the said official.

8. In all these writ petitions, the fourth respondent, namely The Commissioner, Dharapuram Municipality, Dharapuram, has filed counter affidavits and in para 4 of the counter affidavit, given the list of 9 encroachers and pointed out that out of the said 9 persons, 5 persons had filed Civil Suits in O.S.Nos.210 to 214 of 2016, challenging the notice dated 19.07.2016 and no interim orders were granted and all the Suits were subsequently withdrawn on 17.11.2016. The fourth respondent would further state that Survey Map of the Kottapulipalayam Road would show that the structures are very much on the road and they cause obstruction to the free movement of the vehicles and pedestrian and the superstructures are put up without any permission from the fourth respondent and two of the premises are used for commercial purposes and further took a stand that the superstructures of the petitioners are not in line with the adjoining or contiguous patta lands and they are situated in a part of the road itself and the Survey Map would show the nature of the street and the structures of the petitioners. It is further stated by the fourth respondent that the road has to be restored to its full width and the same is very much essential for the smooth flow of traffic and pedestrians particularly in the junction of Kottapulipalayam Road, Bye Pass Road and Udumalpet Road and due to encroachment by the petitioners, the width of the road has been reduced to a great extent and therefore, encroachments are likely to be acquired and superstructures are also to be demolished. The fourth respondent also took a stand that the petitioners, being rank trespassers, are not entitled to any remedy and though the superstructures of the petitioners was assessed to property tax and they have been able to obtain certain resolutions for the issue of patta in their favour, they cannot claim any legal right for their illegal action of encroaching the public road and the property tax assessments of the petitioners have also been cancelled, vide proceedings dated 30.11.2016 and therefore, prays for vacating the interim orders and dismissal of these writ petitions.

9. Additional Counter Affidavits of the fourth respondent has also been filed, wherein it is averred that the petitioner and others were issued with patta for their own occupation and use on free of cost for Bommanallur Village in S.No.341 admeasuring to an extent of 62 sq.ft. for each person and it is located within the limits of Dharapuram and therefore, they can move to those place so as to enable them to remove the encroachments and demolish the superstructures and it is also very much essential to facilitate free movement of vehicles in the junction.

10. Mr.T.Mohan, learned counsel appearing for the petitioners in W.P.Nos.40245 and 40246 of 2016 has drawn the attention of this Court to resolution No.1174 of the fourth respondent dated 15.06.2009, wherein no objection was given for granting free house site pattas and the resolution also made a request for relaxation of relevant rules and requested the Government to issue patta to them as per G.O.(Ms)No.854 of the Revenue Department and contrary to the stand of the local body in terms of the Resolution dated 15.06.2009, the Commissioner of Dharapuram Municipality took a contra stand and the same is unsustainable. It is the further submission of the learned counsel appearing for the petitioners that adjacent to the encroached lands, patta lands are located wherein constructions has been put up which are not authorized/deviated constructions and unless and until patta lands are acquired, road cannot be widened and further invited the attention of this Court to the photographs and would submit that there is no access for free flow and movement of traffic and the superstructure put up by the petitioner no way cause hindrance for free movement of the public and taking into consideration of the fact that the petitioners' forefathers and the petitioners are residing there for nearly 40 years and that their source of livelihood is within the town limits of Dharapuram Municipality and if they are shifted to Bommanallur Village, their livelihood would be affected and their wards are also would not be in a position to continue their studies. Alternatively, it is pleaded by the learned counsel appearing for the petitioners in W.P.Nos.40245 and 40246 of 2016 that this Court, vide order dated 22.12.2016, observed that till the plan is approved and the patta lands are acquired for road widening, the possession of the petitioners shall not be disturbed and prays for appropriate orders.

11. Mr.K.Sudhakar, learned counsel appearing for the petitioner in W.P.No.28090 of 2017, which is filed as Public Interest Litigation, would submit that in the light of the stand taken by the fourth respondent in their counter affidavit and additional counter affidavit, the lands which is under occupation of the petitioners in the form of encroachments along with unauthorised constructions have to be demolished forthwith to fulfill the public purpose, namely ensuring free flow of traffic and widening of road and the fourth respondent was also benevolent by giving them alternative site and since it is a fair offer, the writ petitioners are expected to move to the new location so as to enable the fourth respondent to fulfill his obligation towards public and prays for implementation of the

decision of the Commissioner, Dharapuram Municipality dated 27.06.2016.

12. Mr.V.Vasanthakumar, learned counsel appearing for the petitioners in W.P.Nos.43646 to 43650 of 2016, who are similarly placed like that of the petitioners in W.P.Nos.40245 and 40246 of 2016 would contend that the petitioners are the residents of the locality for quite long time and their source of livelihood are in and around the places where they reside and their wards are studying in nearby schools and the fourth respondent has also made a positive recommendation by passing a Resolution dated 15.06.2009 and the matter is still pending with the Government for consideration and unless and until private patta lands along with superstructures which lies adjacent to the petitioners lands, are acquired for road widening, their possession may not be disturbed and further that alternative site is located far away from Dharapuram Municipality and it would be extremely difficult for the petitioners and their family members to go their places of work and it would definitely create great hardship and inconvenience to them and prays for appropriate orders.

13. Per contra, Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents 1 to 3 and Mr.P.Srinivas, learned counsel appearing for the fourth respondent had invited the attention of this Court to the counter affidavit as well as additional counter affidavit of the fourth respondent and would contend that admittedly all the petitioners are rank encroachers/trespassers and they have also put up superstructures without any planning permission/approval and the encroachments are on the road itself and taking into consideration the interest of public and welfare of the State, a decision has been taken to remove the encroachments and accordingly the impugned notice has been issued under Section 182(1) of the Tamil Nadu District Municipalities Act, 1920 and it cannot be faulted with. It is the further submission of the learned counsel appearing for the fourth respondent that a fair offer has also been given in the form of alternative accommodation at Bommanallur Village, Dharapuram Taluk and the petitioners are accorded with opportunity to move away and as a matter of right they cannot seek for regularization of encroachments and prays for dismissal of these writ petitions.

14. This Court paid its best attention to the rival submissions and also perused the entire materials plaed before it.

15. The Revenue Divisional Officer, Thiruppur District/second respondent in W.P.No.28090 of 2017 - filed as Public Interest Litigation, vide proceedings dated 27.06.2016 in Na.Ka.No.12615/2015/Aa3, has considered the issue relating to removal of encroachments and found that the encroached portion belongs to Dharapuram Municipality and in the absence of any legal interdiction/restraint order, the Commissioner of Municipality is competent to initiate action under the Tamil Nadu District Municipalities Act, 1920 and accordingly, the

Commissioner of Dharapuram Municipality had issued notice to other writ petitioners under Section 182(1) of the said Act calling upon them to remove the encroachments within a stipulated time frame and also indicated that action would be taken if they fail to comply with the terms of the said notice.

16. It is relevant to extract Section 182 of the Tamil Nadu District Municipalities Act, 1920:

"182. Removal of encroachments.- (1) The executive authority may, by notice, require the owner or occupier of any premises to remove or alter any projection, encroachment or obstruction (other than a door, gate, bar or ground-floor window) situated against or in front of such premises and in or over any street.

(2) If the owner or occupier of the premises proves that any such projection, encroachment or obstruction has existed for a period sufficient under the law of limitation to give any person a prescriptive title thereto or that it was erected or made with the permission or licence of any municipal authority duly empowered in that behalf, and that the period, if any, for which the permission or licence is valid has not expired, the municipal council shall take reasonable compensation to every person who suffers damage by the removal or alteration of the same."

Public streets are vested with the Local Body/Dharapuram Municipality under Chapter V - Section 61 of the Tamil Nadu District Municipalities Act, 1920.

17. Once road or way is a public street, members of the public are having right of way and no obstruction can be made preventing the public from having excess to the public street/road. [See The Commissioner, Panruti Municipality, Panruti v. Sri Kannika Parameswari Ammab Temple by its Managing Trustee, K.Narasimha Chettiar [1996 (2) MLJ 339].

18. In Rasel Muthiriar v. The Tiruchirapalli Municipality represented by its Commissioner, having its office at Municipal Office Buildings, Tiruchirapalli [1996 (1) MLJ 578], this Court has considered the scope of Section 61 of the Tamil Nadu District Municipalities Act, 1920 and held that road margin vest with the Municipality.

19. In The Commissioner, Panruti Municipality, Panruti v. Sri Kannika Parameswari Ammab Temple by its Managing Trustee, K.Narasimha Chettiar [1996 (2) MLJ 339, it is held that though the road held with the municipality, it has no right to cause obstruction.

20. In Ramaraju v. The State of Tamil Nadu [2005 (2) CTC 741], scope of Sections 61(1), 182, 183 of the Tamil Nadu District Municipalities Act, 1920 came up for consideration and so also unauthorized encroachment of National Highways, State Highways and Government lands. It is held in the said decision that encroachment of road or road margin vested with the

Municipality can be removed only after following the procedure contemplated under Chapter IX of the Tamil Nadu District Municipalities Act, 1920 and further that payment of property tax, provision of water supply, electricity service connection cannot be construed as conferring any independent right, if the encroachment is otherwise unauthorised. In para 38 of the said decision, the Full Bench clarified as follows:

"38...

(1) If the encroachment is on road or road margins, vested in Municipalities, the removal if any is to be effected only after following the procedure contemplated in Chapter IX of the Tamil Nadu District Municipalities Act and more particularly the provisions contained in Section 182 and Section 183(6). Before taking action under Section 182 of the District Municipalities Act, notice in writing giving at least two weeks time should be served and, if the person avoids to receive the notice, such notice can be effected by affixure. However, notice by any other means, such as through public announcement or beating of drums or by general notice in newspapers, may not be sufficient.

(2) The decision in W.P.No. 689 of 2005 cannot be construed as having abrogated the statutory power of the Council under Sections 182 and 183. The Council may grant licence to put up verandas, balconies, sunshades, weather-frames and the like. Similarly, the Council has 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 under Sections 183(1) and 183(3) should be exercised keeping in view the provisions contained in Section 183(4) and no such licence under Section 183(1) or lease under Section 183(3) should be granted if the projection, construction or occupation is likely to be injurious to health or cause public inconvenience or otherwise materially interfere with the use of the road as such. Any projection or construction put up under Section 183(1) or (2) can be removed on expiry of the licence or the lease, as the case may be. Compensation is required to be paid in matters coming within the scope of 182(2).

(3) Payment of property tax, provisions of water connection or electricity by themselves cannot be construed as conferring any independent right, if the encroachment is otherwise unauthorised.

(4) The above directions and observations are also applicable to encroachment in respect of road or road margins coming within the jurisdiction of Municipal Corporations or Town and Village Panchayats, in which event, necessary action can be taken by the concerned authorities by following the relevant provisions of law applicable to such Corporations or Panchayats.

(5) To the extent the [National Highways Act, 1956](#) and the [Control of National Highways \(Land and Traffic\) Act, 2002](#) are applicable, action can be taken only by following the procedure prescribed under such statutes. Similarly the provisions of the [Tamil Nadu Highways Act, 2001](#), are applicable to the Roads coming under the [State Act](#).

(6) If the encroachment is on the land belonging to the Local Authorities, but such land is not part of the road or road margin or roadside land, eviction can be effected by following the procedure contemplated in law, namely, either by taking recourse to the [Tamil Nadu Public Premises \(Eviction of Unauthorised Occupants\) Act, 1975](#) or any other law applicable or otherwise by taking recourse to Civil Courts and not by use of unilateral force.

(7) So far as the encroachment on the land belonging to the Government is concerned, action for eviction if any can be taken only by the appropriate authority and by following the procedure contemplated under the [Tamil Nadu Land Encroachment Act, 1905](#).

(8) The directions issued in W.P.No. 689 of 2005 are applicable to removal of encroachments on roads and road margins and not other lands belonging to the Local Authorities or the State. The said decision should not be construed as giving a licence to the Local Authorities to cancel the existing license or lease or to remove the encroachments without following the procedure contemplated under the law.

(9) If any Civil Courts decree or interim order is holding the field, obviously, no action can be taken, unless and until such a decree or interim order is set aside or vacated in a manner known to law."

21. It is relevant to extract para 4 of the counter affidavit of the fourth respondent dated 28.11.2016 filed in W.P.Nos.40245 and 40246 of :

"4. It is submitted that the petitioner and a few others have encroached on the Kottapulipalayam Road. The measurement of the road with reference to the Survey Maps for the Road show that the road portion has been encroached by nine persons. Their names, extent, nature of encroachment are as follows:

Sl.No	Name	Extent in Sq.M.	Nature
1	Ayyasamy	24.32	Residence/Tenanted
2	Alagirisamy	60.16	Workshop
3	Raju	62.09	Residence
4	Sakunthala 40245/16)	77.60	Residence

Sl.No	Name	Extent in Sq.M.	Nature
5	Karthikeyan	78.48	Residence
6	Nagaraj	36.40	Residence
7	Ganesh	22.96	Residence
8	Muthulakshmi (WP 40246/16)	29.64	Residence
9	Thangaraj	31.96	Shop converted to Residence after 18-11-16.

22. The First Bench of this Court during the pendency of W.P.Nos.40245 and 40246 of 2016, in it's order dated 22.11.2016, indicated that if the houses of the petitioners are in line with the houses constructed on patta road, then the road can be widened only if patta lands are also acquired and in the order dated 12.12.2016, has taken note of the stand of the Dharapuram Municipality that if the alignment of road is taken including the orange portion, the triangle area where the petitioners are located would be substantively required for road widening and it would be like a pyramid, the substantive portion of which is cut leaving a small triangle at the top, but that is not the portion occupied by the petitioners. The First Bench of this Court, in the subsequent order dated 22.12.2016, has also taken note of the fact that the patta land being acquired was not the correct representation and the plan is stated to have been made three years ago and is still not approved and therefore, till the plan is approved and the patta land acquired, no purpose would be served in disturbing the petitioners and called upon the Local Body to file a proper affidavit and accordingly, additional counter affidavit dated 22.01.2017 has been filed and the said affidavit do not satisfy the query raised by this Court, in the order dated 22.12.2016.

23. Admittedly, the petitioners are encroachers and it also appears that they have put up construction without any authorization and however their claim is that they are purchasers and they themselves are in occupation of the encroached area in question for very many areas, is also not under serious dispute.

24. The photographs filed would also indicate that on both sides of the road, superstructures are in existence and it is not clear either from the counter affidavit or in the additional counter affidavit that adjacent to the encroached lands, whether any patta lands are there wherein superstructures has been put up and whether those constructions are authorised or not? The fate of the resolution of the fourth respondent dated 15.06.2009 which was said to have been forwarded to the Government for approval was also not known.

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25. It is the specific case of the petitioners that they are economically poor and hailing from lower strata of the

society and eking out their livelihood by doing menial jobs in Dharapuram Town and their wards are also studying in schools in the said Town and alternative accommodation provided to some of the encroachers are far away from Dharapuram Town and however, it is to be pointed out at this juncture that encroachers like the petitioners, as a matter of right, cannot insist for retention of the place or for a place to which they should be shifted but at the same time, unless and until proper survey and measurement is done as to the original width of the road and the present position in the form of encroachments by the petitioners and location of the patta lands adjacent to the said places of encroachments, it is not possible to arrive at a conclusion as to the space/area required for road widening and the Hon'ble First Bench of this Court, during the pendency of W.P.Nos.40245 and 40256 of 2016, has precisely taken into consideration the said fact and called upon the Dharapuram Municipality to file an affidavit specifying the particulars and however, neither the counter affidavit nor the additional counter affidavit of the said local body contain those particulars.

26. Therefore, the fourth respondent, with the help and aid of the revenue officials, shall carryout detailed survey of Kottapulipalayam Road, Dharapuram Municipality in T.S.No.67, Block No.21, Ward No.6, after putting on notice the persons concerned which include the petitioners and patta landowners and subject to the result of the survey, shall take proper action in accordance with law for removal of encroachments and demolition of unauthorised constructions/deviated constructions.

27. As per Section 182(2) of the Tamil Nadu District Municipalities Act, 1920, if the owner or occupier of the premises proves that any such projection, encroachment or obstruction has existed for a period sufficient under the law of limitation to give any person a prescriptive title thereto or that it was erected or made with the permission or licence of any municipal authority duly empowered in that behalf, and that the period, if any, for which the permission or licence is valid has not expired, the municipal council shall make reasonable compensation to every person who suffers damage by the removal or alteration of the same. Therefore, it may open to the petitioners to do so in the form of representation along with enclosures containing relevant and authenticated documents within a period of six weeks from the date of receipt of a copy of this order and upon receipt of the same, the Commissioner of Dharapuram Municipality is directed to consider and dispose of the same in the light of the above said statutory provision and pass appropriate orders within a further period of eight weeks thereafter and communicate the decision taken, to the petitioners and persons concerned.

28. The Commissioner of Dharapuram Municipality shall also carryout survey of T.S.N.67, Block No.27, Ward No.6, Kottapulipalayam Road, Dharapuram Municipality as directed by this Court in the earlier paragraphs, within a period of three months from the date of receipt of a copy of this order and depending upon the result of the said survey and disposal of the

representation submitted by the petitioners/encroachers under Section 182(2) of the Tamil Nadu District Municipalities Act, 1920, is at liberty to proceed further in accordance with law and till such time, the possession of the writ petitioners/encroachments need not be disturbed. It is also made clear that till the Commissioner, Dharapuram Municipality complete the said exercise as directed by this Court, the petitioners shall not create any third party rights in respect of the land and superstructures in question and shall not alter it's physical features also.

29. The Writ Petitions stand disposed of on the above terms. No costs.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

jvm
To

- 1.The District Collector,
Tirupur District, Tiruppur.
- 2.The District Revenue Officer,
Tirupur District, Tiruppur.
- 3.The Revenue Divisional Officer,
Dharapuram,
Tiruppur District.
- 4.The Commissioner,
Dharapuram Municipality,
Dharapuram, Tiruppur District.

Copy to:

The Secretary to the Government,
Municipal Administration and Water Supply Department,
Chennai-600 009.

+4cc to Mr.V.Vasanthakumar Advocate, S.R.No.
87013,87015,87016,87017

+1cc to Mr.N.Ponraj Advocate, S.R.No. 87014
+1cc to Mr.P.Srinivas Advocate, S.R.No. 87076
+1cc to Mr.K.Sudhakar Advocate, S.R.No. 86694
+1cc to the Government Pleader, S.R.No. 86804, 86791,
86806, 86805

Common Order in
W.P.Nos.40245, 40246,
43646 to 43650 to 2016
and W.P.No.28090 of 2017