

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Reserved on : 19.07.2017
Pronounced on : 31.07.2017

WEB COPY

CORAM :

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.3121 of 2014
and
M.P(MD) .No.2 of 2014

- 1.A.Jagan
- 2.C.Arunachalam
- 3.V.G.Athiyaman
- 4.B.Ravindran
- 5.N.Prabakaran
- 6.S.Jayakumar
- 7.S.Kandan
- 8.M.Medonarani
- 9.S.Sridevi
- 10.N.Narasimhan
- 11.C.James singarayar
- 12.P.Mohan
- 13.S.Ramachandran
- 14.C.Seetharaman
- 15.R.Selvarengam
- 16.K.Sugunadevi
- 17.A.Sathiyathan
- 18.S.Thomasdurai
- 19.M.Shanmugasundaram
- 20.K.Sivasankar
- 21.R.Murugan
- 22.S.Ramachandran
- 23.L.G.Anna
- 24.S.Kunjithapatham
- 25.T.R.Jayaraman
- 26.R.Vijayakumar
- 27.K.Balasubramanian
- 28.K.Venkataramani
- 29.S.Arulgunasekar
- 30.S.Sengutuvan

... Petitioners

Vs.

1. The District Collector
Thanjavur District,
Thanjavur - 613 001.



2. The Commissioner,
Thanjavur Municipality,
Thanjavur - 613 001.

3. The Rajarajan Co-operative Housing Society,
Rep.by its Secretary.

4.S.Murugesan
5.R.Selvaraj
6.S.Saraswathi
7.K.Mahendran
8.Manickam
9.K.Tamilarasan
10.Lakshmi Rajendran
11.Devasagayam
12.N.Chinnadurai
13.Palani

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, to direct the respondents 1 and 2 to remove the encroachments made by the respondents 4 to 13 in the public road situated near Pillayarpatti Railway Quarry line on the southern side of Ward No.4 in T.S.Nos.60/2(1) and 60/2(2) (Block No.60) of Daniel Thomas Nagar of Thanjavur town (North-South measuring 50' (breadth) and East-West measuring 1500' (length) on the basis of the final representation sent by the petitioners dated 15.10.2012 to the respondents 1 and 2 within the time to be stipulated by this Court.

For Petitioners : Mr.M.R.S.Prabhu
For Respondents : Mr.M.Govindan, Spl.G.P for R1
Mr.M.Joseph Thatheus Jerome
for Mr.S.Pakalavan for R2
Mr.V.K.Vijayaraghavan for R3
Mr.V.Chandrasekar for RR4 to 12
No appearance for R13

O R D E R

(Order of the Court was made by **G.R.SWAMINATHAN, J.**)

This writ petition has been filed by the residents of New Daniel Thomas Nagar, Thanjavur-7 seeking removal of the encroachments said to have been made by respondents 4 to 13 in the public road situate near Pillyarpatti railway quarry line. The petitioners have given representation dated 15 October 2012 to the District Collector, Thanjavur and the Commissioner, Thanjavur Municipality (New Corporation) in this regard. Since no action was taken, the present writ petition has been filed.



2. Heard Mr.M.R.S.Prabhu, learned counsel appearing for the petitioners and Mr.M.Govindan, learned Special Government Pleader appearing for the first respondent, Mr.M.Joseph Thatheus Jerome, learned counsel for Mr.S.Pakalavan appearing for the second respondent and Mr.V.K.Vijayaraghavan, learned counsel appearing for the third respondent.

3. The petitioners state that Daniel Thomas Nagar was formed more than six decades ago by the third respondent Society. Lands were acquired by the Government and given to the third respondent Society for the purpose of plotting and selling the same to the members. The third respondent Society owned the lands comprised T.S.Nos.3103, 3104, 3105, 3106 and 3107. An appropriate lay out was formed leaving provision for roads and public places. On all the four sides, roads were provided for. Unfortunately, the northern road was substantially encroached upon. The roads were gifted by the Society to the local body. As on date, the said roads stand in the name of the local body only. They are being maintained as such by local body. Therefore the local body has duty to maintain roads free of encroachments. Since this duty has not been discharged in the case of the encroachment committed in respect of the road lying on the northern side, representations were given. Since there was no action initiated there on, the present writ petition has been filed.

4. The second respondent has filed a counter affidavit. The second respondent has pointed out that some 40 families committed the encroachments and they have put up residential buildings and that they are living there for more than 40 years. Since, the encroachers are in settled possession, the local body had addressed the District Collector, Thanjavur for making alternative arrangements. The second respondent has made it very clear that they would remove the entire encroachment only after providing such an alternative arrangement.

5. The counsel for the alleged encroachers filed a typed set of papers from which it can be seen that O.S.No.288/2008 was filed by one K.S.Periyasamy before the District Munsif Court, Thanjavur for removal of the very same encroachments. The said suit was dismissed on 01.02.2010 on a technical ground. It is stated that the matter is pending at the second appeal stage before this Court. The learned counsel for the encroachers also pointed out that the Tahsildar, Thanjavur had addressed the Commissioner, Thanjavur Municipality for getting their no objection for issuance of patta. Final decision is yet to be taken. The learned counsel for the encroachers further contended that the some 35 families are in occupation of a property which was abandoned by the railways for more than 50 years.

6. According to the encroachers, there is a northern road even today in existence and that their houses are only abutting the said road. The right of passage and ingress and egress are very



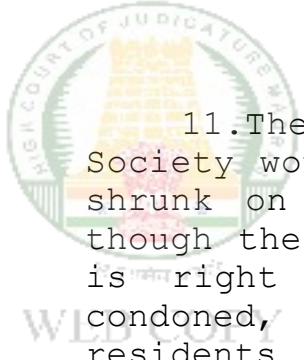
much available to the residents of New Daniel Thomas Nagar. The area said to be in occupation of the alleged encroachers is known as "Jawan Nagar". 13 feet road is very much available and it is owned and maintained by the Municipality.

7. We heard the learned counsel for the parties and also went through the records.

8. Even though O.S.No.288/2008 on the file of the District Munsif Court, Thanjavur was filed for the same relief by the residents of the New Daniel Thomas Nagar Residents Welfare Association represented by its President, K.Periyasamy, it can be seen that the dismissal of the suit was on the ground of non compliance of Order 1 Rule 8 of C.P.C. Therefore, the dismissal of the suit cannot be an impediment for maintaining the present writ petition.

9. But, be that as it may, even the records produced by the writ petitioner would show that lay out was approved way back in 1947 and that the then Tanjore Municipality had passed a resolution on 30 June 1952 for taking over the roads. In the affidavit filed in support of the writ petition, the details regarding encroachments have not been set out. Some 13 persons have been mentioned as encroachers and Mandamus is sought for directing the local body to remove them. Even in the affidavit filed by the local body, it is mentioned that there are some 45 families, who are in occupation for more than 40 years. The encroachers have also contended that the area occupied by them is known as "Jawan Nagar" and that they have been residing there for more than 50 years. Residential houses have been put up, they have been assessed to house tax, they have been providing with electricity connections. When there are a large number of residents, who are obviously in settled possession for more than 40 years, we find it difficult to issue Mandamus sought for. One of the residents of New Daniel Thomas Nagar initiated civil proceedings. It is certainly open to the writ petitioners, who are similarly placed residents to file an appropriate civil suit for vindicating their rights. As already pointed out, the Tahsildar, Tanjore has written to the local body seeking no objection for considering the application for grant of patta.

10. The learned counsel for the local body also submitted that in matters such as this, humanitarian approach will have to be adopted. It is also seen that the access rights of the residents of New Daniel Thomas Nagar have not been completely cut off. The said lay out has roads on all the four sides. The grievance is only regarding encroachment committed on the northern side. Even on the northern side, the road is very much in existence. The learned counsel for the encroachers, a 13 feet road is available.



11.The counsel for the petitioner and the third respondent Society would only contend that the road portion had considerably shrunk on account of encroachment made over the years. Even though the contention of the learned counsel for the petitioners is right that encroachments on public roads should not be condoned, considering the long and settled possession of the residents of Jawan Nagar for more than 45 years, We decline to issue the Writ of Mandamus sought for. We make it clear that it is open to the petitioners to file a comprehensive suit before the competent Civil Court ventilating their grievances.

12.The writ petition is disposed of with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector
Thanjavur District,
Thanjavur - 613 001.

2. The Commissioner,
Thanjavur Municipality,
Thanjavur - 613 001.

+3cc to M/S. M.R.S.PRABHU, Advocate, SR.No.68940.

+1cc to M/S. V.CHANDRASEKAR, Advocate, SR.No.69501.

+1cc to Special Government Pleader, SR.No. 69757.

order made in
W.P (MD) No.3121 of 2014
and
M.P (MD) .No.2 of 2014
31.07.2017

Skm / Arul

SDS/SKN:RSK/SAR 2/09.08.2017/5P/8C