



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on :04.09.2017

Pronounced on :15.12.2017

CORAM :

**THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

W.P. (MD) No.194 of 2016

S.Ahraf Alikhan

... Petitioner

vs.

- 1.The Commissioner,
Madurai Corporation,
Madurai.
- 2.The Tahsildar,
Madurai West Taluk,
Madurai District.
- 3.The Assistant Executive Engineer,
Madurai West,
Madurai District.
- 4.The Commissioner of Police,
Madurai City,
Madurai.
- 5.The Inspector of Police,
S.S.Colony Police Station,
Madurai District.
- 6.Kannan
- 7.Priya
- 8.Mariya Suriya
- 9.Kathar Batcha
- 10.Suba
- 11.Parimala
- 12.Irulayeeammal
- 13.Baby
- 14.Venudakshin
- 15.Vijaya



16. Elisabeth
17. Thiraiusha
18. Arockiadhas
19. Selvam
20. Sebastian
21. Joseph
22. Subathar Anarkali
23. Dhanalakshmi
24. Aananthi
25. Pandiyammal
26. Pitchaiammal
27. Lakshmi
28. Mathana
29. Shanthi
30. Pounraj
31. Paulpandi
32. Raja
33. Lourdhusamy
34. Thangammal
35. Paramasivam
36. Mokkaiah
37. Rajan
38. Habifabegam
39. Arockiadhass
40. Nalini
41. Sharmila
42. Edward
43. Miniyammal
44. Shanthini
45. Elisapath
46. Albert
47. Seethalakshmi

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 to 5 to remove the encroachments made by the respondents 6 to 47 in the scheme road in T.S.No.1610/2 and the bund of the open drainage channel situated at Ansari Nagar 4th Street, Ward No.17, Mahaboopalayam, Madurai - 16, within the time frame stipulated fixed by this Court.

For Petitioner : Mr.R.Vijayakumar

For Respondents : Mr.R.Murali for R1
Mr.M.Govindan for RR2 to 5
Mr.Karthick Subramanian for RR9,
14, 16, 18, 30, 31, 37, 39, 41 & 45
Mr.R.Narayan for RR8, 10, 20, 27, 34
46 and 47

**ORDER**

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

The writ petitioner is a resident of Mahaboopalayam, Madurai-16 and is running a school at Door No.13/1, Ansari Nagar IV Street, Ward No.17, Mahaboopalayam, Madurai-16 in the name and style of Khan School. According to him, adjacent to the said street, there runs an open drainage channel and parallel thereto, a 40' scheme road is situated in T.S.No.1610/2. He would allege that the private respondents herein have encroached upon the said scheme road. As a result, the right of public pathway has been obstructed.

2.It is his specific case that the Tamil Nadu Slum Clearance Board had allotted houses to them but that instead of moving to the allotted houses, they are squatting in the public road. He had given a representation dated 8.1.2014 followed by reminders on 4.8.2014 and 13.11.2014. The Corporation officials made a show of taking action. But till date, the encroachments have not been removed. This is causing great hindrance to the public. Since the authorities are inactive he has filed this writ petition for directing the corporation as well as the revenue officials to take action in the matter.

3.We have perused the materials enclosed in the typed set of papers. It is seen that the primary grievance of the writ petitioner appears to be that on account of dumping of waste in the adjacent channel by the encroachers, there is a real hazard to public hygiene. The respondent No.1 is therefore directed to take immediate action in the matter. Maintenance of public hygiene has to be necessarily a continuing exercise. It can never be an one time action.

4.As regards clearing the encroachments, we are of the view that in this case the direction as sought for by the writ petitioner cannot be granted. In the scheme road in question, a large number of families belonging to all communities and religions are living. Aadhar cards, voter ID cards and family ration cards have been issued. The same have been enclosed in the typed set of papers by the learned counsel appearing for the private respondents. In all such matters, it is for the authorities to take into account the ground realities and take appropriate action. If really alternative accommodation had been arranged or allotted, the encroachers can be removed after issuing due notice. There will be children studying in schools. Many of them will be eking out their livelihood by working as domestic help in the vicinity. They cannot be uprooted overnight. Right to housing and shelter is a basic human right. This court cannot lose sight of the same while considering a petition for issuance of mandamus for removal of encroachments.



5.We direct the first respondent to consider the writ petitioner's representation dated 8.1.2014 and take appropriate action in accordance with law. The writ petition stands disposed of accordingly. No costs.

WEB COPY

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1.The Commissioner,
Madurai Corporation,
Madurai.

2.The Tahsildar,
Madurai West Taluk,
Madurai District.

3.The Assistant Executive Engineer,
Madurai West,
Madurai District.

4.The Commissioner of Police,
Madurai City,
Madurai.

5.The Inspector of Police,
S.S.Colony Police Station,
Madurai District.

+1cc to M/S.R.MURALI, Advocate SR.No.92874.

+1cc to M/S.R.VIJAYAKUMAR, Advocate SR.No.93028.

+1cc to Special Government Pleader in SR.No.93197.

Order made in
W.P. (MD) No.194 of 2016
15.12.2017

Arul

SDS/GT/SAR 1/17.01.2018/4P/9C