



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 09.01.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P (MD) No.22343 of 2016

and

W.M.P (MD) No.16017 of 2016

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Madura Capital Market Services (P) Ltd.,
New No.214, (Old No.138) East Veli Street,
III Floor, Kasim Building,
Madurai - 625 001,
rep. by its Managing Director. ... Petitioner

vs.

1.The District Collector,
Theni District,
Theni - 625 531.

2.The Tahsildar,
Periakulam Taluk,
Periakulam,
Theni District - 625 601.

3.Block Development Officer,
(Village Panchayat)
Periakulam,
Theni District- 625 601.

4.Panchayat President/Panchayat Secretary,
Melmangalam Village Panchayat,
Melmangalam and Village,
Periakulam Taluk,
Theni District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Mandamus directing the respondents 1 to 4 to remove the Public Toilet under construction in the street in Sy.No.1006 and also by encroaching 3 cents of our patta land in Sy.No.1005 of Melmangalam village, Periakulam Taluk, Theni District, within the time fixed by this Court.

For Petitioner : Mr.C.Dhanaseelan

For Respondents : Mr.T.S.Mohammed Mohideen

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

Additional Government Pleader
for R1 and R2

Mr.R.Karthikeyan for R3 and R4



O R D E R

This writ petition is filed seeking for a Mandamus directing the respondents 1 to 4 to remove the public toilet under construction in the street in S.No.1006 by encroaching 3 cents of patta land in S.No.1005 of Melmangalam village, Periakulam Taluk, Theni District.

2. Heard the learned counsel appearing for the petitioner, the learned Additional Government Pleader appearing for the respondents 1 and 2 and the learned counsel appearing for the respondents 3 and 4 and perused the materials placed before this Court.

3. The case of the petitioner is that a public toilet is being constructed by the fourth respondent panchayat encroaching upon three cents of land belonging to the petitioner. It is the further case of the petitioner that such land was purchased by the petitioner in the year 2010 from their erstwhile owner. On the contrary, the claim of the petitioner is specifically disputed by the respondents, by contending that what is being constructed now is only after demolishing the existing one for the past 40 years and therefore, the allegation of the petitioner, as if, the respondents are encroaching upon three cents of land now, is not correct. However, it is specifically contended by the third respondent in the counter affidavit that less than 1½ cents of land belonging to the petitioner is occupied by the sanitary complex and the panchayat is ready to pay compensation to the petitioner towards such extent as per the guideline value of the registration authority.

4. The learned counsel appearing for the petitioner is not willing to accept the contention of the respondents, more particularly, with regard to the extent of the land encroached and also the proposal to pay the compensation. It is his case that 3 cents of land have been encroached that too only now, by putting up construction. On the contrary, it is the contention of the respondents that originally, toilet was in existence for a long time i.e., for more than 40 years and therefore, the alleged encroachment said to have been taken place recently, is not correct.

5. Considering the above-stated rival submission of the parties, this Court is of the view that there is a disputed question of fact with regard to the extent of encroachment, time of encroachment etc., and therefore, all these things have to be considered and decided only by letting in evidence by both parties and that has to be done only in an appropriate proceedings, namely, a civil suit. Therefore, this Court while exercising its jurisdiction under Article 226 of the Constitution of India, <https://hccourts.gov.in/services> the disputed questions of facts.

6. Accordingly, this writ petition is disposed of without expressing any view on the merits and the contentions raised by both the parties. However, liberty is granted to the petitioner to



file appropriate suit against the respondents seeking for appropriate relief. If any such suit is filed, the same shall be considered and decided on its own merits and in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar[CS-I]

/True copy/

Sub Assistant Registrar/-

To

1.The District Collector,
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Theni - 625 531.

2.The Tahsildar,
Periakulam Taluk,
Periakulam,
Theni District - 625 601.

3.Block Development Officer,
(Village Panchayat)
Periakulam,
Theni District- 625 601.

4.Panchayat President/Panchayat Secretary,
Melmangalam Village Panchayat,
Melmangalam and Village,
Periakulam Taluk,
Theni District.

+1cc to Mr.C.Dhanaseelan,Advocate,SR.No.1874

+1cc to Special Government pleader,SR.No.1789

SKN

KK-MPA-SK-27.01.17-3P-7C

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