



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.02.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

WP.(MD) No.24007 of 2017 and 1485 of 2018
and
W.M.P.(MD) No.1558 of 2018

W.P. (MD) No.24007 of 2017

Tamilvanan

... Petitioner

-vs-

1.The District Collector,
Collectorate Campus,
Dindigul District.

2.The Tahsildar,
Ottanchathiram Taluk,
Ottanchathiram,
Dindigul District.

3.The Block Development Officer,
Ottanchathiram Union,
Ottanchathiram,
Dindigul District.

4.Rathinavel

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of Mandamus, to direct the respondent Nos.1 to 3 to consider the petitioner's representation dated 27.10.2017 and 04.12.2017 and remove the illegal encroachment made by the respondent No.4 on the pathway in Survey No.128/32 situated at North Street, Lekkaiyankottai village, Salaipudur Post, Ottanchathiram Taluk, Dindigul District and take necessary steps to enable utilization of the petitioner within the time stipulated by this Court.

For Petitioner	:	Mr.G.Bhagavath Singh
For Respondents	:	Mr.Dayalan, AGP for RR1 and 2 Mr.M.Rajaraman, G.A. for R3 Mr.T.Lenin kumar for R4

W.P. (MD) No.1485 of 2018

... Petitioner

-vs-



1.The Sub Collector cum Revenue
Divisional Officer,
Palai, Dindigul District.

2.The Tahsildar,
Ottanchathiram Taluk,
Dindigul District.

3.Tamilvanan

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, to call for the records pertaining to the impugned order passed by the 1st respondent in his proceedings Na.Ka.No.7790/2017/A1 dated 29.01.2017 and quash the same on the ground that the same is arbitrary, illegal and without any legal basis.

For Petitioner : Mr.S.Karthik
For Respondents : Mr.M.Rajarajan, G.A. For RR1 & 2

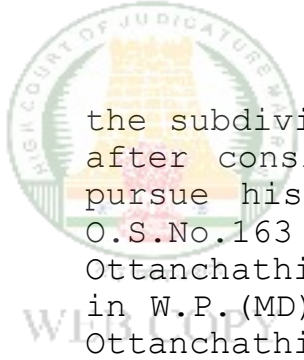
C O M M O N O R D E R

(Order of the Court was made by **T.S.SIVAGNANAM, J.**)

Heard Mr.S.Karthik, learned counsel for the petitioner in W.P. (MD) No.1485 of 2008 and Mr.G.Bhagavathsingh, learned counsel for the petitioner in W.P.(MD) No.24007 of 2017/R3 in W.P.(MD) No.1485 of 2018 and Mr.M.Rajarajan, learned Government Advocate appearing for RR1 and 2 in W.P.(MD) No.1485 of 2018 and for R3 in W.P.(MD) No.24007 of 2017 and Mr.T.Lenin Kumari for R4.

2.W.P.(MD) No.24007 of 2017 was filed by one Tamilvanan, who is the third respondent in W.P.(MD) No.1485 of 2018. He sought for a direction to the official respondents to consider his representation and remove the illegal encroachment made by the fourth respondent one Rathinavel, S/o.Perumal in a pathway comprised in S.No.128/32 situated at North Street, Lekkaiyankottai village, Salaipudur Post, Ottanchathiram Taluk, Dindigul District. During the pendency of the writ petition, the revenue officials initiated action and the Sub Collector cum Revenue Divisional Officer, Palani initiated proceedings to cancel the sub division of the property comprised in S.No.128/32 into S.Nos.128/40 and 128/41.

3.The petitioner in W.P.(MD) No.1485 of 2018 viz., V.Indrani, wife of Varatharajan had obtained fee house site patta in the said subdivided lands viz., S.Nos.128/40 and 128/41. After proper enquiry, the Sub Collector found that the subdivision was incorrect and the land in question is a government land and therefore, by order dated 29.11.2017, the subdivision was cancelled and the revenue records were restored to the original position by mentioning the S.No.128/32. As on date, the petitioner in W.P.(MD) No.1485 of 2018 viz., V.Indrani does not have any right over the property as



the subdivision made earlier has been cancelled. The Sub Collector, after considering all the aspects held that the petitioner has to pursue his remedy before the Civil Court in the pending suit in O.S.No.163 of 2017 on the file of the District Munsif, Ottanchathiram. In the said suit, the said Tamilvanan, petitioner in W.P.(MD) No.24007 of 2017 is the first defendant, the Tahsildar, Ottanchathiram is the second defendant, the Sub Collector is the third defendant and the District Collector, Dindigul District is the fourth defendant. In our considered view, the order passed by the Sub Collector dated 29.11.2017 impugned in W.P.(MD) No.1485 of 2018 is perfectly in order and if at all the petitioner Tmt.V.Indrani seeks to claim right over the property she is required to establish the same independently before the civil Court.

4. Therefore, we find no reason to set aside the impugned order dated 29.11.2017. Accordingly, W.P.(MD) No.1485 of 2018 is required to be dismissed and the same is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

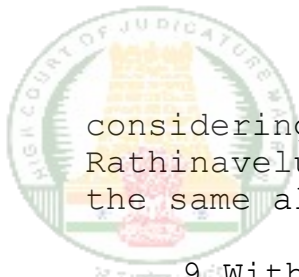
5. The learned counsel for the petitioner would submit that in the said suit in O.S.No.163 of 2017, there are no interim orders as on date and the petitioner apprehends that her possession may be disturbed. In the light of the above finding rendered by this Court, we consider that a reasonable time should be given to the petitioner to move the civil Court for appropriate interim relief, if so advised. Therefore, the Sub Collector cum Revenue Divisional Officer, Palani and the Tahsildar, Ottanchathiram are directed not to take any precipitative action against Tmt.V.Indrani, pursuant to the impugned order dated 29.11.2017, for a period of three weeks. Within the said time, it is open to the petitioner to move the Civil Court for appropriate interim relief.

W.P. (MD) No.24007 of 2017

6. So far as W.P.(MD) No.20047 of 2017 filed by Tamilvanan is concerned, since already action has been taken and subdivision granted in favour of V.Indrani has been cancelled, what remains to be done is only in respect of the fourth respondent therein viz., Rathinavel, S/o.Perumal.

7. The learned counsel for the fourth respondent would submit that there is no encroachment and a toilet has been constructed under a Central scheme as the fourth respondent is a physically challenged person. However, reliance is also placed on a report submitted by the Sub Collector. In the light of these disputed questions, we direct the respondents 2 and 3 to issue show cause notice to the fourth respondent, granting 15 days time to submit his objection and after hearing the fourth respondent, the respondents 2 and 3 are directed to pass orders on merits and in accordance with law.

8. The above direction shall be complied with within a period of four weeks from the date of receipt of a copy of this order. While



considering the objections given by the fourth respondent viz., Rathinavelu, if any appeal petition filed by Rathinavelu is pending, the same also be considered and enquired into.

9. With the above direction, W.P. (MD) No. 24007 of 2017 is disposed of. No costs.

Sd/-

Assistant Registrar (CS-III)

/True copy/

Sub Assistant Registrar

To

1. The District Collector,
Collectorate Campus,
Dindigul District.
2. The Tahsildar,
Ottanchathiram Taluk,
Ottanchathiram,
Dindigul District.
3. The Block Development Officer,
Ottanchathiram Union,
Ottanchathiram,
Dindigul District.
4. The Sub Collector cum Revenue
Divisional Officer,
Palai, Dindigul District.

+1CC TO M/S.T.LENIN KUMAR, ADVOCATE, SR NO.51176

+1CC TO M/S.S.DHAYALAN, ADVOCATE, SR NO.51465

+1CC TO M/S.S.KARTHIK, ADVOCATE, SR NO.50897

WP. (MD) No. 24007 of 2017 and 1485 of 2018

and
W.M.P. (MD) No. 1558 of 2018

23.02.2018

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MS/GT/SAR-2/20.03.2018/4P.8C