



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **26.11.2018**

CORAM:

THE HONOURABLE MR.JUSTICE **R.SUBBIAH**

AND

THE HONOURABLE MRS.JUSTICE **R.THARANI**

W.P. [MD] .No.20666 of 2018

M.Faritha Begam

: Petitioner

Vs.

1. The District Collector,
Dindigul Collector Office,
Dindigul.

2. The Commissioner of Corporation,
Dindigul Corporation,
Dindigul.

3. Nagarajan

4. Thameem

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents 1 and 2 herein to remove the unauthorized construction put up by the fourth respondent as "Thameem Hotel" and other unnamed unauthorized construction in T.S.No.912/1A, Madurai Road, Dindigul Town, pursuant to the representation dated 27.08.2018.

For Petitioner : Mr.K.Thenrajan

For Respondent No.1 : Mr.C.Ramar
Additional Government Pleader

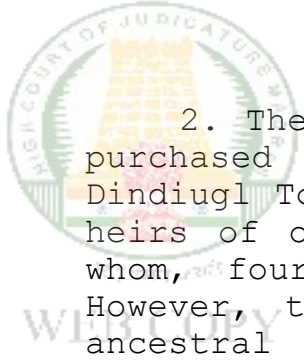
For Respondent No.2 : Mr.J.Lawrence
Standing Counsel

For Respondent No.3 : Mr.S.A.Ajmal Khan

O R D E R

[Order of the Court was made by **R.SUBBIAH, J.**]

Seeking a Writ of Mandamus, directing the respondents 1 and 2 herein to remove the unauthorized construction put up by the fourth respondent as "Thameem Hotel" and other unnamed unauthorized construction in T.S.No.912/1A, Madurai Road, Dindigul Town, the petitioner has come up with this Writ Petition.



2. The case of the petitioner is that her principal vendor had purchased an undivided property in T.S.No.912/1A, Madurai Road, Dindigul Town, to an extent of 2398.3/4 square metre from the legal heirs of one Kathirapuram Beevi, who had six legal heirs, out of whom, four legal heirs gave consent to sell their properties. However, the other two legal heirs caused encumbrances in their ancestral property in T.S.No.912/1A, Madurai Road, Dindigul. Aggrieved over the same, her principal vendor filed O.S.No.106 of 2013, on the file of the District Court, Dindigul, which is pending. In the meantime, the fourth respondent herein, who is the second defendant in the said suit, had engaged the fourth respondent to encroach upon the above property, thereby trespassing into the above property and accordingly, he put up illegal asbestos sheet construction and started to run a hotel in the name and style of "Thameem Hotel" and other unnamed unauthorized construction. In this regard, the petitioner has submitted a representation dated 27.08.2018 to the first respondent to take action and to remove the unauthorized construction put up by the fourth respondent. Since no action has been taken, the petitioner is before this Court with this Writ Petition for the relief stated supra.

3. Today, when the Writ Petition is taken up for consideration, it is reported by the learned Additional Government Pleader appearing for the first respondent that the petitioner has already filed a Civil Suit in O.S.No.106 of 2013, on the file of the District Court, Dindigul, which is pending. When that be so, the present Writ Petition is not maintainable.

4. The third respondent has filed a counter affidavit, contending that the petitioner has filed Civil Suit in O.S.No.106 of 2013, before the District Court, Dindigul, seeking partition and injunction. Thus, the remedy of the petitioner lies elsewhere.

5. We have considered the above submissions and perused the materials available on record.

6. We find force in the submission made by the learned Additional Government Pleader appearing for the first respondent and the learned counsel appearing for the third respondent. In our considered view too, when the Civil Suit filed by the petitioner is pending before the District Court, Dindigul, the petitioner cannot maintain the present Writ Petition and the petitioner has to work out her remedy before the appropriate Civil Court.

7. In the result, the Writ Petition is dismissed, giving liberty to the petitioner to work out his remedy before the Civil Court. No costs.

Sd/-

Assistant Registrar(W)



To

1. The District Collector,
Dindigul Collector Office,
Dindigul.

2. The Commissioner of Corporation,
Dindigul Corporation,
Dindigul.

+1cc to Mr.K.Thenrajan, Advocate Sr.No.97227

+1cc to Mr.J.Lawrence, Advocate Sr.No.96987

+1cc to Mr.S.A.Ajmal Khan, Advocate Sr.No.96886

+1cc to SPL.Govt.Pleader, Sr.No.97055

NB

KM/BK/SAR3/20.12.2018/3P/7C

ORDER MADE IN
W.P. [MD] .No.20666 of 2018
26.11.2018