



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

and

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.(MD) No.20763 to 20765 of 2018

and

WMP(MD)Nos.18521 to 18526 of 2018

M.Dhandapani ... Petitioner in WP(MD)No.20763/18

P.Subramani ... Petitioner in WP(MD)No.20764/18

Kulandaivel ... Petitioner in WP(MD)No.20765/18

vs.

1.The District Collector,
Dindigul District,
Dindigul.

2.The Special Tahsildar,
(Adi Dravidar Welfare) Unit I,
Dindigul.

3.The Executive Officer,
Chinnalapatti Town Panchayat,
Dindigul District.

4.The Revenue Inspector,
Chinnalapatti Firka,
Dindigul District.

5.L.Pitchai Muthu ... Respondents in all the writ
petitions.

WP(MD)Nos.20763 and 20764 of 2018 filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified mandamus calling for the records relating to impugned order of the 3rd respondent in Na.Ka.No.640 / 2018 / C dated 15/09/2018 and consequential notice of the 4th respondent dated 16/09/2018 issued under section 7 of land Encroachment Act, 1905 and quash the same as illegal and unconstitutional, consequently forbear the respondents 1 to 4 from demolishing the petitioners' houses bearing D.No.1-2-17K (Plot No.13) and D.No.1-2-24 (Plot No.5) respectively, Adi Dravidar Colony, Veerammal Kovil Street, Kalikkampatti village, Aathoor



Taluk, Dindigul District in any manner under the guise of encroachment.

WP(MD)No.20765 of 2018 filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified mandamus calling for the records relating to the impugned order of the 3rd respondent in Na.Ka.No.640 / 2018 / C dated 15/09/2018 and quash the same as illegal and unconstitutional, consequently forbear the respondents 1 to 4 from demolishing the petitioner's house in Plot No.14, Adi Dravidar Colony, Veerammal Kovil Street, Kalikkampatti village, Aathoor Taluk, Dindigul District in any manner under the guise of encroachment.

For Petitioners : Mr.S.Balamurugan
(all the writ petitions)
For R1, R2 & R4 : Mr.VR.Shanmuganathan
Special Government Pleader
For R3 : Mr.M.Rajarajan
(all the writ petitions)

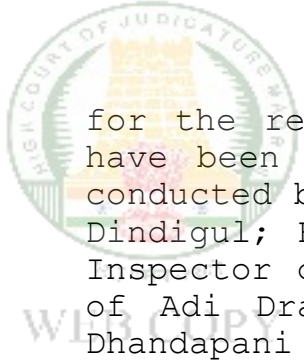
COMMON ORDER

[Order of the Court was made by T.RAJA, J.]

M.Dhandapani and P.Subramani have come to this Court with separate writ petition, challenging the similar impugned notice dated 15.09.2018 issued by the third respondent herein in Na.Ka.No.640 / 2018 / C and the consequential notice issued by the fourth respondent under Section 7 of the Tamil Nadu Land Encroachment Act, 1905. One Kulandaivel has also filed a separate writ petition, challenging the very same impugned notice dated 15.09.2018.

2.Taking heavy reliance on the assignment order dated 19.11.1981 issued in favour of M.Dhandapani S/o.Mariyappan, allotting plot No.13 in S.F.No.208 situated at Chinnakalikkampatti Village, Dindigul District, the learned counsel appearing for the petitioners submitted that the lands assigned in favour of the petitioners are having 50 x 60 links in S.F.No.208. The petitioners have not encroached more than the assigned land in the assignment orders. In terms of feet, the assigned land is 40 x 33 feet, and the petitioners have been in peaceful possession and enjoyment of the same from the date of assignment. If the respondents, after proper survey by an officer from the Adi Dravidar Welfare Department, Dindigul and find that the petitioners have encroached into the nearby street attaching to their plots, they are prepared to cooperate with the officer even for removal of encroachment, alleged to have been mentioned by the respondents in the impugned orders.

3.Opposing the above statement, Mr.M.Rajarajan, learned <https://hcservices.ecourts.gov.in/hcservices/> counsel appearing for the third respondent and Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing



for the respondents 1, 2 and 4 submitted that the impugned orders have been issued against the writ petitioners after proper survey conducted by the Special Tahsildar, Adi Dravidar Welfare Department, Dindigul; Executive Officer, Chinnalapatti Town Panchayat; Sanitary Inspector of Chinnalapatti Town Panchayat and Special Sub Inspector of Adi Dravidar Welfare Department, Dindigul in the presence of Dhandapani and P.Subramani. However, the name of Kulandaivelu is not found in the surveyor's report enclosed in the Contempt Petition (MD)No.640 of 2018. Therefore, when the petitioners viz., Dhandapani and P.Subramani were present at the time of survey conducted by the aforementioned officers, the final report submitted to be accepted. The petitioners cannot again reargue the matter and wake up the same issue, which has already been concluded, in the surveyor's report. Till date neither Dhandapani nor P.Subramani has given any objection to the surveyor's report before the Tahsildar, Adi Dravidar Welfare Department, Dindigul. That shows that the petitioners have accepted that all of them have encroached into the common pathway. Therefore, the present writ petitions are liable to be dismissed.

4.Mr.V.R.Shanmuganathan, learned Special Government Pleader also placed before us the sketch prepared by the Special Tahsildar, Adi Dravidar Welfare Department, Dindigul, which clearly indicates that the plots assigned in favour of the petitioners are located in Plot Nos.13, 5 and 14. Plot No.13 has been allotted in favour of M.Dhandapani, Plot No.5 has been allotted in favour of P.Subramani and Plot No.14 has been allotted to Kulandaivel and the same are contiguous to the pathway. The measurement of the pathway is given as 24 metres length and 6 metres breadth. Though the original breadth of the pathway is 6 metres, four metres have been conveniently encroached by both Dhandapani and P.Subramani.

5.At this juncture, the learned counsel appearing for the petitioners submitted that the petitioners undertake for removal of encroachment. If a direction is issued to the authorities who are going to remove the encroachment, the authorities shall remove the excess land which is according to them the encroachment made by the petitioners. At the same time, they should ensure that the lands assigned in favour of the petitioners are not disturbed i.e., 50 x 60 links equivalent to 40 x 33 feet.

6.Accepting the submission made by the learned counsel appearing for the petitioners, we dispose of these writ petitions with the following directions:

"While removing the encroachment restoring the common pathway with 6 metres breadth and 24 metres length, the respondents 1 to 4 should equally ensure that the lands assigned in favour of the petitioners in the assignment orders, are not disturbed/reduced. Needless to mention that if the petitioners, leaving some portion of the land assigned to them and encroached into the street, such encroachment should be removed."



No costs.
closed.

Consequently, WMP (MD) Nos.18521 to 18526 of 2018 are

Sd/-
Assistant Registrar (AD-I)

Sub Assistant Registrar (CS-IV)

To

- 1.The District Collector,
Dindigul District,
Dindigul.
 - 2.The Special Tahsildar,
(Adi Dravidar Welfare) Unit I,
Dindigul.
 - 3.The Executive Officer,
Chinnalapatti Town Panchayat,
Dindigul District.
 - 4.The Revenue Inspector,
Chinnalapatti Firka,
Dindigul District.
- +1 cc to Special Government Pleader, SR.No.88693.
+1 CC TO MR.S.BALAMURUGAN, ADVOCATE IN SR.NO.18804.

MJ
DS RSK SAR4 15 11 2018 4P 7C

W.P. (MD) No.20763 to 20765 of 2018
03.10.2018