



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.06.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P. (MD) Nos.558 and 4128 of 2019

and

W.M.P. (MD) Nos.3223 and 3224 of 2019

W.P. (MD) No.558 of 2019

M.Ponnusamy

... Petitioner

Vs.

1.The District Collector,
Virudhunagar District,
Virudhunagar.

2.The Aruppukottai Municipality,
represented by its Commissioner,
Aruppukottai, Virudhunagar District.

3.The Assistant Director of Handloom
and Textiles,
Collectorate Complex,
Virudhunagar Town & District.

4.S.Periasamy

... Respondents

Prayer in WP(MD). 558/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the respondents 1 to 3 to remove the encroachments in the form of unauthorised constructions in TS No.66, Block Number 19, Ward A, Aruppukottai Municipal Town and to take action to protect and preserve the public purpose Government land in TS No. 25, Block No.25, Ward A, Aruppukottai Municipal town by taking over the community hall constructed therein under the management of the 3rd respondent.

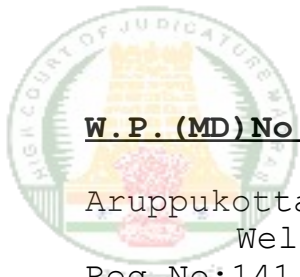
For Petitioner : Mr.R.Gowrishankar

For Respondents : Mr.A.K.Baskara Pandian
Special Government Pleader
for R.1

: Mr.N.Dilip Kumar
for R.2

: Mr.Aayiram K.Selvakumar
for R.3

: Mr.M.Thirunavukkarasu
for R.4

**W.P. (MD) No.4128 of 2019**

Aruppukottai Weaver Colony
Welfare Association,
Reg No:141/2013,
represented by its President,
Mr.S.Periasamy.

... Petitioner

Vs.

1.The Deputy Director of Town and
Country Planning,
4, Hakkim AJ Malkan Road,
Chinna Chokkikulam,
Goripalayam, Madurai.

2.The Aruppukottai Municipality
represented by,
The Commissioner,
Aruppukottai,
Virudhunagar District-626 002.

3.The Assistant Director of Handloom and
Textiles,
Collectorate Complex,
Virudhunagar District-626 002.

4.Mr.Ponnusamy

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for records of the third respondent made in Na.Ka.No.8634/2016/E, dated 04.02.2019 and quash the same as arbitrary and illegal.

For Petitioner : Mr.M.Thirunavukkarasu
For Respondents : Mr.A.K.Baskara Pandian
Special Government Pleader
for R.1

: Mr.N.Dilip Kumar
for R.2

: Mr.Aayiram K.Selvakumar
for R.3

: Mr.R.Gowrishankar
for R.4

COMMON ORDER**(Order of the Court was made by M.SATHYANARAYANAN, J)**

taken up for final disposal by consent and are disposed of by this common order.

W.P. (MD) No. 558 of 2019:

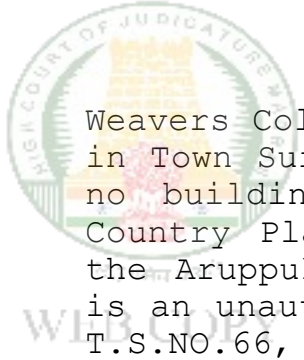
2. The petitioner claims to be a resident of Aruppukottai and also a retired Government servant and he worked as an Assistant Director of Surveys and claims that he is also a Public Interest Litigant and aggrieved by the fact of unauthorised constructions put up by the fourth respondent in the form a community hall in T.S.No.25 as well as the unauthorized construction in the form of washroom on a public street in T.S.No.66 of Aruppukottai Municipal Town.

3. It is the case of the petitioner that T.S.No.25, Block No.25, Ward "A", Aruppukottai Town forms part of the original lay out promoted in the year 1957 and revised in the year 1959 and it was shown as a vacant land and was earmarked for a public purpose and as per the revenue classification, still the land is classified as Government Poromboke.

4. It is further stated by the petitioner that as per the lay out conditions, the Assistant Director of Handloom and Textiles is the responsible officer for effective maintenance and upkeep of the Weavers Colony including the land in T.S.No.25. The said official, vide proceedings dated 27.11.2007, had also formed a maintenance committee with nine office bearers selected among the member of the five co-operative societies. A set of guidelines have also been formulated. The original set of office bearers were appointed by the Assistant Director for a period of three years and the period was extended and the private respondent, in the capacity as a President of such Maintenance Committee, had functioned till the year 2016 and during that period, without obtaining any planning permission, had put up a community hall in T.S.No.25 and in order to cater the needs of the persons to the community hall, had put up the toilets by encroaching the public street in T.S.No.66. Hence, the petitioner came forward to file this writ petition praying for issuance of Writ of Mandamus to remove the encroachments in the form of unauthorised constructions in T.S.No.66 and also take appropriate action to protect and preserve the public purpose Government land in T.S.No.25, by taking over the community hall construction therein.

5. The writ petition was entertained on 09.01.2019 and taking into consideration the averments made in the writ petition, this Court directed the Commissioner of Aruppukottai Municipality to cause inspection, after putting on notice to the persons concerned and file status report.

6. The second respondent has filed the visit / status report dated 18.01.2019 with photographs and the contents of the same would disclose that the community hall was constructed by M/s



Weavers Colony Maintenance and Welfare Association and it is located in Town Survey No.25, admeasuring to an extent of 154.54 sq.m., and no building plan approval has been obtained from the Town and Country Planning Authorities and no planning permit was issued by the Aruppukottai Municipality and therefore, the said construction is an unauthorised construction. The report further reads that in T.S.NO.66, a septic tank, in order to cater to the needs of the community hall, is constructed encroaching upon the road in Nesavalar Colony 6th street, Aruppukottai, which runs towards Anbunagar in Aruppukottai in T.S.No.66 and the total extent of the encroachment is around 21 sq.m., and the length in the eastern side is 1.8 meter, in the western side is 4.00 meter, in the northern side is 7.00 meter and in the southern side, it is 7.4 meters.

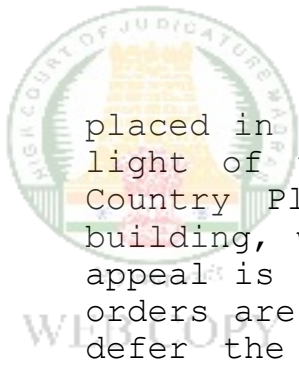
7. The fourth respondent has also filed a counter affidavit and he took a stand that for the benefit of the Weavers, a unanimous decision has been taken in a meeting to put up a community hall and a suit in O.S.No.155 of 2018 has been filed on the file of the Court of District Munsif, Aruppukottai pertains to the location of the road in T.S.NO.66 and the suit is also still pending, in which, the writ petitioner is arrayed as the first defendant. Insofar as the unauthorised construction of a community hall is concerned, a retention application has been filed under Section 56(3) of the Tamil Nadu Town and Country Planning Act, 1971 and Section 216 of the Tamil Nadu District Municipalities Act and the said application was rejected on 31.01.2019 and an appeal was also filed before the Deputy Director of Town and Country Planning and it is also brought to the knowledge of this Court by the learned Counsel appearing for the fourth respondent as well as by the learned Counsel appearing for the petitioner that the said appeal was also rejected on 26.03.2019 by Deputy Director of Town and Country Planning and it is contemplated to file an appeal before the Government also.

8. The learned Counsel appearing for the petitioner would submit that in the light of the report filed by the local body, there may not be any impediment on the part of the concerned authority to take appropriate action to demolish the unauthorised construction and also remove the encroachment in the form of septic tank / washrooms which is located on the public street and hence, prays for appropriate orders.

W.P. (MD) No.4128 of 2019:

9. The fourth respondent in W.P.(MD)No.558 of 2019 is the petitioner herein and challenging the impugned proceedings of the first respondent dated 04.02.2019 in requesting the local body namely the Aruppukottai Municipality to take appropriate action as to the demolition of the unauthorised construction as well as the removal of encroachment, came forward to file this Writ Petition.

10. Mr.M.Thirunavukkarasu, learned Counsel appearing for the petitioner has drawn the attention of this Court to the materials



placed in support of the writ petition and would submit that in the light of the order of rejection by Deputy Director of Town and Country Planning, dated 26.03.2019, as to the retention of the building, which is used as the community hall in T.S.No.25, further appeal is being prepared before the Government and till appropriate orders are passed, this Court may direct the concerned officials to defer the further proceedings as to the demolition of the said unauthorised construction.

11. It is also pointed out by the learned Counsel appearing for the petitioner that insofar as the septic tank and washrooms are concerned, it is an unobjectionable encroachment and it also pertains to the provision of minimum basic amenity and therefore, this Court may also pass appropriate direction directing the local body not to remove the same.

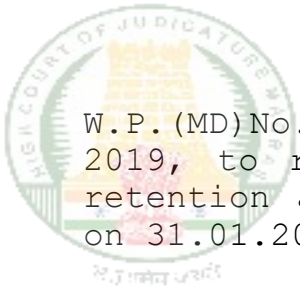
12. It is also the submission of the learned Counsel appearing for the petitioner that in the light of the pendency of O.S.No.155 of 2018, on the file of the Court of District Munsif, Aruppukottai, despite the absence of interim order, the points urged by the learned Counsel appearing for the petitioner in W.P.(MD) No.558 of 2019 are also the subject matter of consideration in the said suit and till the disposal of the suit also, further proceedings may be deferred.

13. The learned Special Government Pleader appearing for first respondent would submit that as and when the appeal is preferred and if the papers are otherwise in order, it will deal with in accordance with law.

14. This Court has considered the rival submissions and perused the materials placed before this Court.

15. A perusal of the status report of the Aruppukottai Municipality dated 18.01.2019 would *prima facie* disclose that the construction in the form of community hall in Town Survey No.25 is an unauthorised construction and that apart, the washrooms and septic tank has also been located in T.S.No.66. Though the learned Counsel appearing for the private respondent in W.P.(MD)No.558 of 2019 and the petitioner in W.P.(MD)No.4128 of 2019 would plead that as far as the location of community hall is concerned, the petitioner in W.P.(MD)No.558 of 2019 also belongs to the very same community and that the Public Interest Litigation filed by him is not a Public Interest Litigation, but only a private interest litigation to wreck vengeance, in the light of the stand taken by the Aruppukottai Municipality, this Court is not able to aid the petitioner. It is also obligatory that if anybody put up a construction without any authorisation or permit, they have to face the consequences arising out of the same.

16. It is also brought to the knowledge of this Court that necessary permission sought for by the private respondent in



W.P.(MD)No.558 of 2019 and the petitioner in W.P.(MD)No.4128 of 2019, to retain the said building was also taken in the form of retention application on 28.01.2019 and the same was also rejected on 31.01.2019 by the Aruppukottai Municipality.

17. It is the submission of the learned Counsel appearing for the petitioner in W.P.(MD)No.558 of 2019 that necessary steps had also been taken to file an appeal before the Government. It is always open to the petitioner to do so and it is always at liberty to the petitioner to work out his remedy before the appropriate forum in accordance with law and this Court is not inclined to observe anything in this regard.

18. Insofar as the location of the septic tank and washrooms in T.S.No.66 is concerned, the local body is at liberty to proceed in accordance with law, after putting the concerned persons on notice and the said exercise shall be carried out within a period of eight weeks from the date of receipt of a copy of this order.

19. In the light of the above, W.P.(MD)No.588 of 2019 is disposed of accordingly. No costs.

20. W.P.(MD)No.4128 of 2019 is dismissed subject to the above observations. No costs. Consequently, the connected Miscellaneous Petitions are also dismissed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The District Collector,
Virudhunagar District,
Virudhunagar.

2.The Commissioner,
Aruppukottai Municipality,
Aruppukottai,
Virudhunagar District.

3.The Assistant Director of Handloom
and Textiles,
Collectorate Complex,
Virudhunagar Town & District.



4. The Deputy Director of Town and
Country Planning,
4, Hakkim AJ Malkan Road,
Chinna Chokkikulam,
Goripalayam, Madurai.

1 CC to M/s.M.THIRUNAVUKKARASU, Advocate (SR-69042[F] dated
17/06/2019)

+2 CC to M/s.N.DILIP KUMAR, Advocate (SR-69139,69141[F] dated
17/06/2019)

+1 CC to M/s.R.GOWRI SHANKAR, Advocate (SR-69351[F] dated
18/06/2019)

W.P. (MD) Nos.558 and 4128 of 2019
and
W.M.P. (MD) Nos.3223 and 3224 of 2019
17.06.2019

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KK/SAR/24.06.2019/7P-9C