



WEB COPY

Writ Petition (MD).Nos.1338 and 1857 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.09.2019

CORAM:

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE Mrs. JUSTICE R.THARANI

Writ Petition (MD).Nos.1338 and 1857 of 2019

and

Cont.P.(MD)No.1515 of 2018

and

W.M.P.(MD)Nos.1147 to 1149, 1571 and 2586 of 2019

W.P.(MD)No.1338 of 2019:-

P.Natarajan

... Petitioner

Vs.

1.The Assistant Engineer,
Public Works Department WRO,
Irrigation Section No.II,
Periyar Vaigai Basin - Sub Division No.I,
Madurai.

2.The Tahsildar,
Madurai North Taluk, Madurai.

3.The District Collector, Madurai District.

4.Senthilkumar,
The Assistant Engineer,
Public Works Department WRO,
Irrigation Section No.II,
Periyar Vaigai Basin - Sub Division No.I,
Madurai.

... Respondents

Prayer: Writ Petition is filed under Article 226 of Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the impugned notice dated 17.11.2018 and pasted on the door of the petitioner on 06.12.2018 regarding the removal of encroachment in Paravai - Oothukal in Survey No.114 in the village, Madurai North Taluk on the file of the first respondent and quash the same and further directing the respondent to pay to the petitioner appropriate compensation of the destruction of his pavement.



For Petitioner : Mr.G.Prabhu Rajadurai
For Respondents 1 to 3 : Mr.A.K.Baskara Pandiyan, SGP
For Advocate Commissioner : Mr.S. Balaji

W.P. (MD)No.1857 of 2019:-

S.Shanmugapriya

... Petitioner

Vs.

1.The District Collector,
Madurai District,
Madurai - 625 020.

The Assistant Engineer,
Public Works Department WRO,
Irrigation Section No.II,
Periyar Vaigai Basin - Sub Division No.I,
Madurai.

2.The Tahsildar,
Madurai North Taluk,
Madurai District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondents to follow the due process of law before initiating any proceedings for demolition of the petitioner's house in Plot NO.7 in Survey no.169/1B in Sri Balaji Nagar, Paravai Village, Madurai North Taluk, Madurai Distirct.

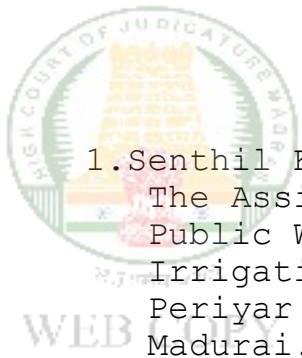
For Petitioner : Mr.V.Karthikeyan
For Respondents 1 to 3 : Mr.A.K.Baskara Pandiyan,
Spl. Govt. Pleader

Cont.P. (MD)No.1515 of 2018:-

Sri Meenakshi Residents Welfare Association,
Rep by its President,
P.Veerappan,
No.43-C, Akilagam,
Sri Meenakshi Nagar,
Mangaiarkkarasi College Road,
Paravai,
Madurai-625 402.

... Petitioner/Petitioner

Vs.



1.Senthil Kumar
The Assistant Engineer,
Public Works Department WRO,
Irrigation Section No.II,
Periyar Vaigai Basin - Sub Division No.I,
Madurai.

2.Siva Kumar,
The Tahsildar,
Madurai North Taluk,
Madurai District.

3.Chandra Sekar,
Inspector of Police,
Koodalpudhur Police Station,
Madurai.

... Respondents/Respondents

Prayer: Contempt Petition is filed under Section 11 of Contempt of Courts Act, to punish the respondents for willful deliberate disobedience of the order passed by this Court made in W.P.(MD) NO.15244 of 2018 dated 02.08.2018.

Prayer in WP(MD). 15244 of 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondents to remove the encroachment made in S.No.114, Vilangudi Village, Madurai North by strictly implementing the proceedings of the 1st respondent dated 26.05.2017 and to maintain the Oothukkal Vaikal as water body.

For Petitioner : Mr.V.Panneer Selvam
For Respondents 1 to 3 : Mr.A.K.Baskara Pandiyan,
Spl. Govt. Pleader

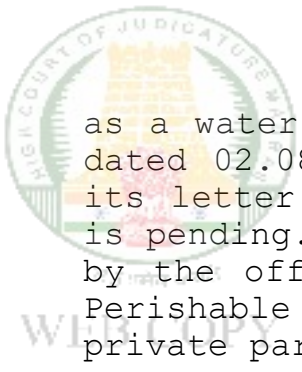
ORDER

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

Heard the learned counsel appearing for the parties.

2.There are two writ petitions and one contempt petition arising out of a common issue.

3.The genesis is the order passed in W.P.(MD)No.15244 of 2018 filed by Sri Meenakshi Nagar Residents Welfare Association, wherein they sought for a direction to remove encroachments made in S.No.114, Vilangudi Village, Madurai North by implementing the proceedings of the Assistant Engineer, Public Works Department WRO, Irrigation Section No.II, dated 26.05.2017 and to maintain the Odai



as a water body and the writ petition was disposed of by an order, dated 02.08.2018. Alleging that the order was not complied with in its letter and spirit, the contempt petition is filed and the same is pending. However, as of now action appears to have been initiated by the officials against the Madurai Central Market Vegetable and Perishable Commodities Merchant Co-ordinated Association and two private parties.

4.One of the petitioner is P. Natarajan, who has filed W.P.(MD) No.1338 of 2019, challenging the notice issued by the Assistant Engineer, Public Works Department WRO, Irrigation Section No.II, dated 17.11.2018.

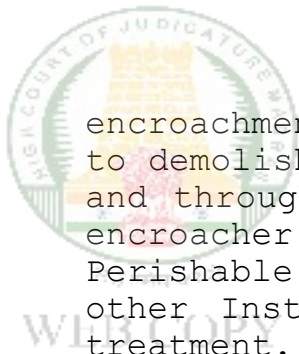
5.The other petitioner is S. Shanmugapriya in W.P.(MD)No.1857 of 2019 and she seeks for a direction to direct the respondents to follow due process of law before demolishing her property.

6.The case of P. Natarajan is that at an earlier point of time, when the survey was conducted, there was no allegation that he is an encroacher. In this regard, the learned counsel for the petitioner has drawn the attention of the Court to the proceedings of the Tahsildar, Madurai North Taluk, dated 05.04.2016. However, there is a reference to a sketch prepared by the Tahsildar, Sathamangalam, wherein the encroachments have been delineated. The petitioner's land is not shown as encroachment. The statement of encroached area prepared by the Tahsildar is also relied on to show the nature of encroachment and it is a commonwall put up by Paravai Village and not by the petitioner.

7.The petitioner S.Shanmugapriya would submit that no notice was issued to her. Without issuing notice, a substantial portion of the residential area, common wall, etc were demolished.

8.The learned Advocate Commissioner has filed a report. In our considered view, in such types of matters, it is very difficult for the Court to rely on the report submitted by the Advocate Commissioner, as it is the Revenue Authorities, who have to demarcate the encroachments, if any.

9.Several photographs were produced before this Court. We find that what was Odai once, is now a small channel. The Madurai Central Market Vegetable and Perishable Commodities Merchant Co-ordinated Association is the major mischief-monger who was impleaded as the fourth respondent in W.P.(MD)No.15244 of 2019. The photographs produced by learned Special Government Pleader shows that some demolition has been done. But they are only cosmetic as the buildings continue to remain intact. The substantial portion of Odai has been fully encroached. Apart from that, from the photographs, we find that there is an educational institution and the authorities are in the process of measuring the property. It is alleged that the



encroachment is a substantial extent. In any event before proceeding to demolish the encroachment, there should not be any hasty decision and throughout excise has to be done. Regardlessly whoever, is the encroacher namely the Madurai Central Market Vegetable and Perishable Commodities Merchant Co-ordinated Associations or any other Institution or individual, they do not require any special treatment. Assuming that the Government also is an encroacher, they should also be dealt in with the same manner that of the the private respondents. There should not be any differential treatment violating Article 14 of the Constitution of India.

10. So far as the petitioner P. Natarajan is concerned, certain documents have been produced and relying on the same, he would state that he is not an encroacher. The petitioner S. Shanmugapriya submitted that no notice has been issued to her.

11. Since the encroachments are of larger magnitude, we direct the Executive Engineer, Public Works Department WRO and the Tahsildar, Madurai North Taluk along with police force to make a spot inspection along survey report, after issuing notice to P. Natarajan and S. Shanmugapriya, and considering whatever documents they produce to proceed take action in accordance with law. We also direct the Commissioner of Police, Madurai to depute adequate Police force to enable the authorities to carry out the directions issued by this Court. Needless to state, the Odai has to be maintained to the fullest extent. Whoever may be the encroacher, are to be dealt with in the similar fashion, be it Government authority or an association. The other relief sought for by P. Natarajan is left open to be agitated before the appropriate forum.

12. With the above directions, these writ petitions are disposed of and the contempt petition is closed. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar(CS)

Mrn

To

1. The Assistant Engineer,
Public Works Department WRO,
Irrigation Section No. II,
Periyar Vaigai Basin - Sub Division No. I,
Madurai.



2.The Tahsildar,
Madurai North Taluk,
Madurai.

3.The District Collector,
Madurai District.

4.The Inspector of Police,
Koodalpudhur Police Station,
Madurai.

+1CC TO MR.V.PERUMAL, Advocate Sr. No.93594

+1CC TO MR.G.PRABHU RAJADURAI, Advocate Sr. No. 93482

Writ Petition (MD).Nos.1338 and 1857 of 2019

and

Cont.P.(MD)No.1515 of 2018

21.10.2019

SGS (CO)

TR(08.11.2019) 6P 7C