



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.11.2019

CORAM:

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

**Writ Petition (MD).Nos.24512, 24516, 24519,
24521, 24523 and 24524 of 2019
and
W.M.P(MD).Nos.21132, 21135, 21141,
21143, 21144 and 21145 of 2019**

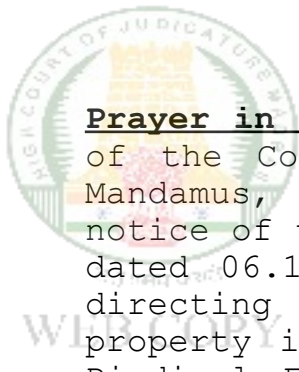
Narayanasamy	... Petitioner in W.P(MD).No.24512 of 2019
Rasu	... Petitioner in W.P(MD).No.24516 of 2019
Perumal	... Petitioner in W.P(MD).No.24519 of 2019
Ganapathi	... Petitioner in W.P(MD).No.24521 of 2019
Patchiyammal	... Petitioner in W.P(MD).No.24523 of 2019
Krishnan	... Petitioner in W.P(MD).No.24524 of 2019

Vs.

1.The District Collector,
Dindigul District,
Dindigul.

2.The Commissioner,
Sanarpatti Panchayat Union,
Sanarpatti, Dindigul District.

... Respondents in all
petitions



Prayer in all petitions: Writ Petitions are filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records in pertaining to the impugned notice of the second respondent vide his proceedings in Na.Ka.No.Nil dated 06.11.2019 and quash the same as illegal and consequently, directing the respondents not to evict the petitioners from their property in S.F.No.498 situated at Rajakkapatti Village Panchayat, Dindigul East Taluk, Dindigul District without following any due process of law.

In all petitions

For Petitioners : Mr.T.Vadivelan

For Respondents : Mr.A.K.Baskarapandian
Special Government Pleader
(for R1)

Mr.M.Murugan
Government Advocate (for R2)

COMMON ORDER

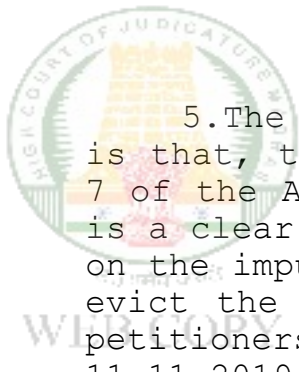
(Order of the Court was made by **T.S.SIVAGNANAM, J.**)

Heard Mr.T.Vadivelan, learned Counsel appearing for petitioners, Mr.A.K.Baskarapandian, learned Special Government Pleader appearing for first respondent and Mr.M.Murugan, learned Government Advocate appearing for the second respondent.

2.By consent of both sides, these writ petitions are taken up for disposal at the admission stage itself.

3.The petitioners have challenged the notice issued by the second respondent under the provisions of the 'Tamil Nadu Land Encroachment Act, 1905' (hereinafter referred to as 'Act' for the sake of brevity) contending that the second respondent has no jurisdiction to issue a notice under the Act and the competent authority is only the Thasildar.

4.The learned Special Government Pleader appearing for the first respondent has brought to our notice that under the Tamil Nadu Panchayat Act, if the area in question, where there is alleged encroachment, falls within the jurisdiction of the Panchayat or Panchayat Union, then the Executive Officer of the Panchayat or Panchayat Union has to take action for eviction. This submission of the learned Special Government Pleader merits acceptance. Therefore, impugned notice cannot be stated to be without jurisdiction.



5.The next contention raised by Mr.D.Vadivelan, learned counsel is that, the authorities have issued both the notices under Section 7 of the Act as well as under Section 6 of the Act together. This is a clear violation of the provisions of the Act. Therefore, based on the impugned notice under Section 6, the second respondent cannot evict the petitioner at this juncture. However, we find that the petitioners have submitted their objections to the notice, dated 11.11.2019. They also submitted representations to the District Collector on 12.11.2019, wherein apart from other things there is a request for grant of patta. Since the land in question has been classified as 'water body' such a request cannot be granted.

6.The learned counsel has produced photographs of the area and we find the houses are not of recent origin, but old houses. They are tiled, thatched and asbestos roof. There are also three shops which have been put up. Apart from that, we find that there is a School, there is a library building and the Community Hall, which are Government buildings. It is not known as to how the authority granted permission to construct a Community Hall, Library, School in a water body and if the respondents are to take action against the petitioners, then obviously they have to demolish School building, Library and the Community Hall. So far as the petitioners are concerned, who have been in occupation for long period of time, can make a request to the District Collector for grant of free house site patta upon their satisfaction of the eligibility requirement. However, this observation will not enure the people, who are running shops nor the persons who have put up pucca construction. The respondents should take a proper decision as to what to be done to the three Government buildings, which are in existence.

7.In the light of the above, in addition to the objection already given, we direct the petitioners to give additional objections along with request for grant of alternate site and the same shall be submitted to the first respondent as well as to the second respondent. The second respondent shall in consultation with the first respondent take a conscious decision in the matter and such decision should be in accordance with law. If they are going to demolish all the structures, then it goes without saying that the Government buildings also should be demolished. However, the question of granting patta in respect of the land classified as 'water body' cannot be entertained. The petitioners are directed to give their explanations/objections within one week from the date of receipt of a copy of this order. After which, the second respondent shall take appropriate action and pass a reasoned order on merits and in accordance with law. The District Collector shall also take appropriate decision in the matter as expeditiously as possible preferably within a period of two weeks from the date of receipt of a copy of this order. Till the order, which is to be passed by the second respondent, status quo, which is prevailing as on date shall be maintained.



8. Accordingly, these Writ Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)

rmk

To

1. The District Collector,
Dindigul District,
Dindigul.

2. The Commissioner,
Sanarpatti Panchayat Union,
Sanarpatti, Dindigul District.

+1 CC to M/s.T. VADIVELAN, Advocate (SR-100215[F] dated
21/11/2019)

+1 CC to M/s.SPL GP (SR-100385[F] dated 21/11/2019)

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JMN(21.11.2019) 4P : 5C