

IN THE HIGH COURT OF JUDICATURE AT MADRAS

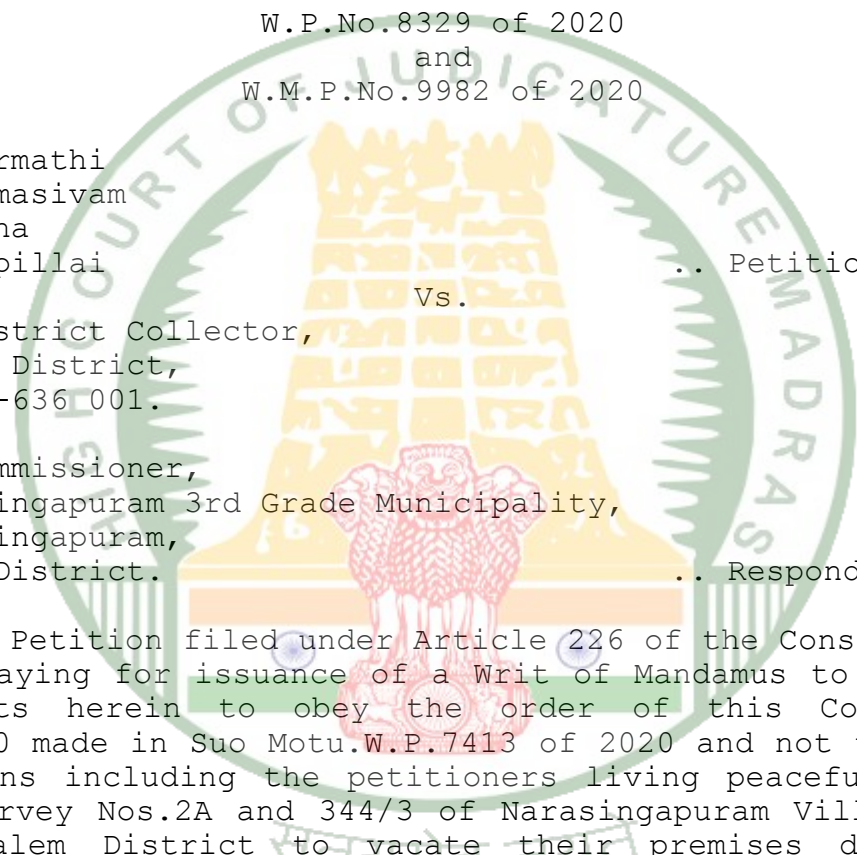
Orders Reserved on : 29.06.2020

Orders Pronounced on : 13.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.8329 of 2020
and
W.M.P.No.9982 of 2020

- 
1. M.Raja
2. K.Valarmathi
3. P.Paramasivam
4. G.Santha
5. Chinnapillai .. Petitioners
- Vs.
1. The District Collector,
Salem District,
Salem-636 001.
2. The Commissioner,
Narasingapuram 3rd Grade Municipality,
Narasingapuram,
Salem District. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the respondents herein to obey the order of this Court, dated 25.04.2020 made in Suo Motu.W.P.7413 of 2020 and not to threaten the persons including the petitioners living peacefully in and around Survey Nos.2A and 344/3 of Narasingapuram Village, Athur Taluk, Salem District to vacate their premises during this COVID-19 Pandemic and consider their representation dated 19.05.2017 as per the order made in W.P.No.24844 to 24849 of 2017, dated 05.10.2017.

For petitioners : Mr.A.Prakash

For respondents : Mr.V.Shanmugasundar, Spl.G.P. for R-1
Mr.L.P.Maurya for R-2

ORDER

R.SUBBIAH, J

The petitioners have filed the above Writ Petition praying for issuance of a Writ of Mandamus to direct the respondents herein to obey the order of this Court, dated 25.04.2020 made in Suo Motu W.P.7413 of 2020 and not to threaten the persons including the petitioners living peacefully in and around Survey Nos.2A and 344/3 of Narasingapuram Village, Athur Taluk, Salem District to vacate their premises during this COVID-19 Pandemic and consider their representation dated 19.05.2017 as per the order made by this Court in W.P.No.24844 to 24849 of 2017, dated 05.10.2017.

2. The affidavit filed in support of the Writ Petition is sworn to by the third petitioner, stating that his house is situated in S.No.2A, Therkukadu, Kanjanuthu Village, Kalludaithankundu 10th Ward, Athur Taluk, Salem District. Apart from his house, an agricultural land is also there in S.No.2A. The said land was in possession of the third petitioner's family for 55 years and after the demise of his father, personally, the said property had been in possession and enjoyment of the third petitioner. The third petitioner is also owning a patta land in S.No.304/6 of Narasingapuram Village, vide Patta No.992.

3. It is the further case of the third petitioner that he is regularly paying the property tax to the second respondent-Municipality. In order to obtain patta for the above land in S.No.2A, the third petitioner approached all the officials in the Taluk Office and also made representation to the Tahsildar of Athur Taluk, but the same was not considered. Hence, the third petitioner filed W.P.No.3137 of 2010 before this Court, in which, this Court, by order dated 17.02.2010, while disposing of the same, had directed the second respondent therein to consider the grievance of the petitioner therein as put forth by him in his representation, dated 17.08.2009, on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of the order.

4. Thereafter, the third petitioner's representation was rejected on 22.05.2010 stating that S.No.344/3 of Narasingapuram Village is a Government land, categorised as Poramboke Tharisu and will be used for implementation of Solid Waste Management of the second respondent-Municipality in the form of Manure Godown. After the said order of rejection was passed, there is no action to implement any Government scheme.

5. In the meanwhile, several persons in and around S.No.2A of Narasingapuram Village, started to use S.No.2A for their residential and agricultural activities. While so, all of a sudden, on 29.08.2017, the Revenue Divisional Officer, Athur,

along with Tahsildar, Village Administrative Officer and Revenue Inspector, visited the lands of the petitioners and informed the petitioners that they are going to take the land in their possession and enjoyment for the purpose of implementing the Solid Waste Management Scheme, but without issuing any notice, the same is sought to be done. Hence, the third petitioner again approached this Court and filed W.P.24847 of 2017, in which, this Court, on 05.10.2017, while passing the common order in the said Writ Petition along with connected matters, directed the first respondent therein to consider the representation, dated 19.05.2017 and pass appropriate orders on merits and in accordance with law, after giving due opportunity of hearing to the petitioners therein as well as the second respondent therein. Time limit of four weeks from the date of receipt of a copy of that order, was given for the disposal of the said representation.

6. While so, on 25.04.2020, in *Suo Motu* W.P.No.7413 of 2020, this Court had directed the State Government to keep in abeyance all encroachment eviction drives, State Revenue Recovery measures and proceedings related to demolition of buildings. This Court also directed the Chief Secretary of the State of Tamil Nadu to ensure that no eviction of any encroachment is carried out until the situation normalises and people are able to approach a Court of Law to ventilate their grievances, if any.

7. Without taking care of the above said order of this Court in *Suo Motu* W.P.No.7413 of 2020, now the respondents are threatening the petitioners, as they are living in and around the said S.Nos.2.A and 344/3 and also to vacate and hand over their lands for the dumping activity. In spite of the same, as the respondents are taking steps to evict the petitioners, they have filed the present Writ Petition for the relief stated supra.

8. It is the submission of the learned counsel for the petitioners that the petitioners are in possession and enjoyment of the lands in question in and around the same and they should not be evicted. Now, the respondents are making an attempt to evict the petitioners in spite of the order passed by this Court in *Suo Motu* W.P.No.7413 of 2020, dated 25.04.2020 and the respondents are threatening the petitioner. Without considering the representation of the petitioner, the respondents are trying to make an attempt to evict the petitioners.

9. It is the reply of the learned counsel appearing for the respondents by filing counter affidavits, that the lands in question are in possession of the second respondent-Municipality and being used as composite yard. In the year 2010 itself, the petitioners have given a representation not to evict them from the lands in question, but pursuant to the order of this Court passed in W.P.No.3137 of 2010, as stated supra, the said representation was rejected. In the year 2017, the petitioners have given another representation only not to use the lands for

the Solid Waste Management purpose. It is incorrect to state that the petitioners' request with regard to the eviction from the lands, was not considered by the authorities.

10. Above all, it is submitted by the learned counsel for the petitioners that the lands in question are free from encroachment and already, the possession had been taken by the second respondent-Municipality.

11. Though very many contentions have been raised in this Writ Petition, ultimately, we find that the possession is not with the petitioners. The possession is with the second respondent-Municipality. That being so, we do not find any merit in the prayer sought for by the petitioner in this Writ Petition. Since it is stated that the lands in question are in possession of the second respondent-Municipality, the prayer of the writ petitioners cannot be entertained. It is settled principle of law that disputed questions of fact cannot be gone into in the Writ Petition by conducting roving enquiry. Hence, we are not inclined to entertain the Writ Petition there being no merits.

12. With the above observations, the Writ Petition is dismissed. No costs. Consequently, W.M.P. is closed.

Sd/-

Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

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To

1. The District Collector,
Salem District, Salem-636 001.
2. The Commissioner,
Narasingapuram 3rd Grade Municipality,
Narasingapuram,
Salem District.

+1cc to Mr.S.Kumara Devan, Advocate SR.No.24688

W.P.No.8329 of 2020

SS(CO)
GMY(03/08/2020)