



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.11.2020

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

AND

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P. (MD)No.15266 of 2020

and

W.M.P. (MD)No.12819 of 2020

The Pallivasal,
represented by its
Jamath President,
Jailani.

... Petitioner

Vs.

1.The Assistant Divisional Engineer,
Assistant Divisional Engineer Office,
Department of Highways (Construction &
Maintenance),
Melur, Madurai.

2.The Tahsildar,
Melur Taluk,
Madurai District.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus to direct the respondents to forbear from demolishing the Dharga situated in Survey No.245 at Kottampatti Village, Melur Taluk, Madurai District.

For Petitioner : Mr.P.Subbaraj

For Respondents : Mr.M.Muthugeethaiyan
Special Government Pleader

ORDER

(Order of the Court was made by N.KIRUBAKARAN,J)

This Writ Petition has been filed seeking for issuance of a Writ of Mandamus to forbear the respondents from demolishing the Dharga situated in Survey No.245 at Kottampatti Village, Melur Taluk, Madurai District.

2. The case of the writ petitioner is that he is the President of Jamath and there is a Dharga situated in Survey No.245 at Kottampatti Village, Melur Taluk, Madurai District, which is adjacent to the National Highways. According to him, the said



Dharga was situated nearly about 100 years before. On 23.10.2020, the second respondent Officials came to the Dharga and tried to remove the encroachment. Therefore, the petitioner submitted a representation dated 23.10.2020 to the second respondent.

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3. It is also stated that earlier a writ petition in W.P.(MD) No.8901 of 2018 was filed before this Court and this Court, vide order dated 23.04.2018, disposed of the said writ petition by directing the respondents to consider the representation of the petitioner. However, the respondents are trying to demolish the Dharga without following due process of law and hence, this writ petition has been filed.

4. Heard Mr.M.Muthugeethaiyan, learned Special Government Pleader appearing for respondents, who would submit that the said Dharga was not situated for the past 100 years. He referred to the Adangal Register, dated 29.03.2019, wherein it has been stated that the person who is in occupation is Pallivasal, whereas the name of the property has been mentioned as National Highways. His own document would show that it is an encroachment.

5. It is also brought to the knowledge of this Court by the learned Special Government Pleader that earlier a writ petition in W.P.(MD)No.3768 of 2019 was filed by K.S.Jailani in his personal capacity seeking to quash the notice, dated 13.02.2019, which was issued to remove the encroachment and the said Writ Petition was dismissed by the Division Bench of this Court, vide order dated 20.02.2019 and paragraph Nos.4 to 6 of the said order are extracted hereunder:

"4.Per contra, the learned Additional Government Pleader, on instructions from the second respondent, would state that the surveyor of Melur Taluk, after conducting a survey, founded the encroachers in NH45B, where the encroachers in Sy.Nos.245, 256/2, 262, 289, 290, 291 and 292 were identified and based on the report of the surveyor, the respondent had proceeded to evict the encroachers.

5.The learned Additional Government Pleader further submitted that the Dargah is constructed in Sy.No.245 and except the Dargah, other encroachers have been removed. He also produced the photographs taken during the eviction proceedings.

6.In the light of the above facts, we find no substance in the contention of learned counsel for the



petitioner. Further the petitioner has not made out any grounds to interfere with the order impugned in this writ petition. In that view, the writ petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed."

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From the above, it is very clear that except the petitioner, the other encroachers have been removed from the encroached lands.

6. That apart, a perusal of the photographs would show that only a thatched shed is put up and there is no evidence to show that the said Dharga is situated in that place for nearly 100 years.

7. The person who drafted the affidavit, should act as an Officer of the Court and they cannot merely act as mouth piece of the client. Even in paragraph No.6 of the affidavit, a reference has been made about the writ petition in W.P.(MD)No.8901 of 2018 and no reference has been made about the writ petition in W.P.(MD) No.3768 of 2019 filed by the petitioner in his individual capacity. There is a suppression of material facts and also mis-statement of facts.

8. It is also found that it is only an encroached land and the land is belonging to the National Highways and nobody has any right to encroach the said land and therefore, the respondents are directed to remove the encroachment immediately within one week from the date of receipt of a copy of this order.

9. The Writ Petition is dismissed, with the costs of Rs.10,000/-(Rupees Ten Thousand only) to be paid by the petitioner to the High Court Legal Services Committee, attached to this Bench, within a period of two weeks from the date of receipt of a copy of this order.

10. Call on 30.11.2020 for reporting compliance.

Sd/-

Assistant Registrar(CS)

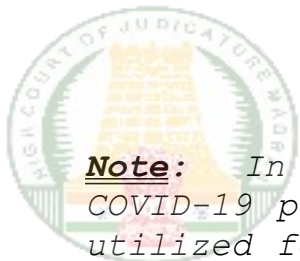
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Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Assistant Divisional Engineer,
Assistant Divisional Engineer Office,
Department of Highways (Construction &
Maintenance),
Melur, Madurai.

2.The Tahsildar,
Melur Taluk,
Madurai District.

Copy to:

The Officer -in- charge,
High Court Legal Services Committee,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.P. SUBBARAJ, Advocate (SR-21193[F] dated 04/11/2020)

+1 CC to M/s.GP (SR-21342[F] dated 05/11/2020)

W.P. (MD) No.15266 of 2020
03.11.2020

(CO)

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