



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **15.12.2020**

CORAM:

THE HONOURABLE MR.JUSTICE **N. KIRUBAKARAN**

AND

THE HONOURABLE MR.JUSTICE **B. PUGALENDHI**

W.P. (MD) No.18638 of 2020

and

W.M.P. (MD) No.15599 of 2020

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Renugadevi

... Petitioner

Vs.

1. The Block Development Officer,
(Village Panchayat)
Kovilpatti,
Tuticorin District.

2. The Tahsildar,
Kovilpatti Taluk,
Tuticorin District.

3. The Panchayat President,
Enammaniyachi Panchayat,
Lakshmipuram Post,
Kovilpatti,
Tuticorin District.

4. D.S.Muniyappan

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the 2nd respondent in Thi3/4848/2020 dated 23.11.2020 and quash the same and consequently direct the 3rd respondent to take care of the maintenance and further development of the public purpose area by providing all amenities.

For Petitioner : Mr.H.Arumugam

For Respondents : Mr.K.P.Narayanakumar,
Special Government Pleader for R1
Mrs.J.Padmavathi Devi,
Special Government Pleader for R2

**ORDER**

[Order of the Court was made by **N. KIRUBAKARAN, J.**]

The petitioner has filed this writ petition challenging the impugned order dated 23.11.2020, by which, it is stated that the petitioner and others have encroached upon the property, which was meant for public purpose in Krishna Nagar, Tamil Nadu Housing Board Colony-I and II to an extent of 117 sq. ft and erected Thulasi madam and platform for doing Yoga.

2. The case of the petitioner is that the Thulasi madam and platform were erected in a vacant site by the Tamil Nadu Housing Board Colony people and it has been allotted for public purpose and therefore, nobody could have grievances in this regard. However, at the instance of a third party, a grievance has been made and based on that, a writ petition has been filed in W.P.(MD)No.12337 of 2020, wherein, a direction has been given to inspect the property and find out as to whether any public property meant for public purpose has been encroached upon or not and take action.

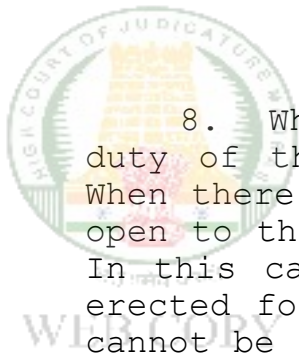
3. Mr.H.Arumugam, learned counsel appearing for the petitioner submits that the respondents, who are supposed to maintain the area meant for park, have not done it. Therefore, the public themselves joined together and erected Tulsi madam and also platform and they are maintaining it. Hence, it could not be called as encroachment and the public are using the same as park area.

4. Heard Mr.H.Arumugam, learned counsel for the petitioner and Mr.K.P.Narayanakumar, learned Special Government Pleader appearing for the first respondent and Mrs.J.Padmavathi Devi, learned Special Government Pleader appearing for the second respondent.

5. Since the fourth respondent is not a necessary party in this writ petition, he is struck off from the array of parties.

6. It is evident from the records that one Muniappan has filed a writ petition before this Court in W.P.(MD)No.12337 of 2020 seeking to remove the encroachments made in Survey Nos.2, 4, 6 and 8B/2 situate in between the Krishna Nagar Housing Board Colony No.I and II, Alampatti. Even in the said order, it has been categorically stated in paragraph 5 of the order that there were wild growth of exotic bushes and they have been removed for public purpose.

7. Moreover, this Court perused the photographs produced before this Court and it would go to show that there is no encroachment and only a Thulasi madam has been erected and platform has also been constructed for public use. Further, some of the photographs would also show that the public themselves have erected the Thulasi madam and park and they are using it.



8. When a property has been earmarked for the park, it is the duty of the local body to maintain the said property as a park. When there is a failure on the part of the local body, it is always open to the public to use it for public purpose by planting plants. In this case, plants only have been planted and platform has been erected for doing yoga and also for public purpose. Therefore, it cannot be called as encroachment. Therefore, the impugned order is quashed and the third respondent is directed to maintain the said area as a park.

9. The consequential order passed by the first respondent dated 14.12.2020, by which, the petitioner and others have been directed to remove the Thulasi madam and platform, is liable to be quashed for the reasons as stated above. Erection of Thulasi madam and platform would not cause any hindrance to the public and it is always used for public purpose and that too in the public place.

10. Accordingly, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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/ /2021

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 Block Development Officer,
(Village Panchayat)
Kovilpatti,
Tuticorin District.
2. The Tahsildar,
Kovilpatti Taluk,
Tuticorin District.



3. The Panchayat President,
Enammaniyachi Panchayat,
Lakshmipuram Post,
Kovilpatti,
Tuticorin District.

WEB COPY

+1cc to Mr.H.Arumugam, Advocate, SR.No.25692.
+1cc to the SPL GP SR.No.26024.

W.P. (MD) No.18638 of 2020
15.12.2020

SSS (CO)
CS (06.01.2021) 4P 6C