



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **22.07.2021**

CORAM:

THE HONOURABLE MR.JUSTICE **T.S. SIVAGNANAM**

AND

THE HONOURABLE MRS.JUSTICE **S.ANANTHI**

W.P. (MD)Nos.3121 of 2020 & 23011 to 23016 of 2018

and

W.M.P. (MD)Nos.20908 to 20917 of 2018

W.P. (MD)No.3121 of 2020

P.Bensingh	... Petitioner in WP(MD). 3121 of 2020
Janaki,	... Petitioner in WP(MD). 23011 of 2018
Saju,	... Petitioner in WP(MD). 23012 of 2018
Rajam,	... Petitioner in WP(MD). 23013 of 2018
Sundari,	... Petitioner in WP(MD). 23014 of 2018
Vinothkumar,	... Petitioner in WP(MD). 23015 of 2018
Savithiri,	... Petitioner in WP(MD). 23016 of 2018

Vs.

1.The District Collector,
Kanyakumari District,
at Nagercoil.

2.The Assistant Divisional Engineer,
State Highways Department,
Thuckalay,
Kanyakumari District

3.The Thasildar,
Kalkulam Talulk
Kanyakumari District.

4.The Executive Engineer,
Public Works Department,
Cheruppalloor,
Kulasekaram,
Kanyakumari District.

.. Respondents in WP(MD).3121 of 2020



1.The District Collector,
Kanyakumari District,
at Nagercoil.

2.The Assistant Divisional Engineer,
State Highways Department,
(Construction and Maintenance)
Thuckalay,
Kanyakumari District

3.The Thasildar,
Kalkulam Talulk
Kanyakumari District.

4.The Assistant Engineer (Distribution),
Tangedco,
Kulasekaram,
Kanyakumari District.

.. Respondents in W.P.(MD)Nos.23011 to 23016 of 2018

PRAYER in W.P.(MD)No.3121 of 2020 :

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Mandamus, to direct the respondents to remove the encroachments made on both sides of the Colachel to Pechiparai State High way in Survey No.274 of Thirparappu Village, Kalkulam Taluk, Kanyakumari District, by considering the representation of the petitioner dated 30.12.2019.

Prayer in WP(MD). 23011/ 2018 :

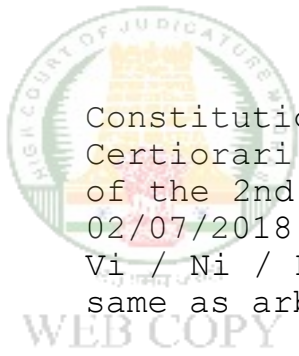
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari to call for the records pertaining to the impugned notice of the 2nd respondent vide proceeding in Ka.No.288 / 2016 / A2 dated 12/07/2017 and consequential order of 4th respondent Ka.No.2 .Po / Ni / Ki / Kula / Ko Kattu / No.480/18 dated 08/11/2018 and quash the same as arbitrary and unconstitutional .

Prayer in WP(MD). 23012/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari to call for the records pertaining to the impugned notice of the 2nd respondent vide proceeding in Ka.No.288 / 2016 / A2 dated 12/07/2017 and consequential order of 4th respondent Ka.No.2 .Po / Vi / Ni / Kula / Ko kattu / No.480/18 dated 08/11/2018 and quash the same as arbitrary and unconstitutional .

Prayer in WP(MD). 23013/ 2018 :

<https://hcservices.ecourts.gov.in/hcservices/> Petition is filed under Article 226 of the



Constitution of India, praying this Court To issue a Writ of Certiorari to call for the records pertaining to the impugned notice of the 2nd respondent vide proceeding in Ka.No.288 / 2016 / A2 dated 02/07/2018 and consequential order of 4th respondent Ka.No.2 .Po / Vi / Ni / Kula / Ko kattu / No.480/18 dated 08/11/2018 and quash the same as arbitrary and unconstitutional .

Prayer in WP(MD). 23014/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari to call for the records pertaining to the impugned notice of the 2nd respondent vide proceeding in Ka.No.288 / 2016 / A2 dated 02/07/2018 and consequential order of 4th respondent Ka.No.2 .Po / Vi / Ni / Kula / Ko kattu / No.480/18 dated 08/11/2018 and quash the same as arbitrary and unconstitutional .

Prayer in WP(MD). 23015/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari to call for the records pertaining to the impugned notice of the 2nd respondent vide proceeding in Ka.No.288 / 2016 / A2 dated 02/07/2018 and consequential order of 4th respondent Ka.No.2 .Po / Vi / ki / Kula / Ko kattu / No.480/18 dated 08/11/2018 and quash the same as arbitrary and unconstitutional .

Prayer in WP(MD). 23016/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari to call for the records pertaining to the impugned notice of the 2nd respondent vide proceeding in Ka.No.288 / 2016 / A2 dated 09/07/2018 and consequential order of 4th respondent Ka.No.2 .Po / Vi / Ki / Kula / Ko kattu / No.480/18 dated 08/11/2018 and quash the same as arbitrary and unconstitutional .

For Petitioner in

W.P. (MD)No.3121 of 2020 : Mr.S.C.Herold Singh

For Petitioners in

W.P. (MD)Nos.23011 to 23016 of 2018 : Mr.P.T.Ramesh Raja

For Respondents 1 to 4 in

W.P. (MD)No.3121 of 2020 &

Respondents 1 to 3 in

W.P. (MD)Nos.23011 to 23016 of 2018 : Mr.A.K.Manickkam
Standing Counsel for Government

4th Respondent in

W.P. (MD)Nos.23011 to 23016 of 2018 :Mrs.S.Srimathy,
Standing Counsel

Mr.S.Vinodh, Advocate Commissioner

<https://hcservices.ecourts.gov.in/hcservices/>



COMMON ORDER

[Order of the Court was made by **T.S. SIVAGNANAM, J.**]

Heard Mr.Mr.S.C.Herold Singh, learned counsel appearing for the petitioner in W.P.(MD)No.3121 of 2020, Mr.P.T.Ramesh Raja, learned counsel appearing for the petitioners in W.P.(MD)Nos.23011 to 23016 of 2018, Mr.A.K.Manickkam, learned Standing Counsel for Government appearing for the respondents 1 to 4 in W.P.(MD)No.3121 of 2020 & respondents 1 to 3 in W.P.(MD)Nos.23011 to 23016 of 2018 and Mrs.S.Srimathy, learned Standing Counsel appearing for the fourth respondent in W.P.(MD)Nos.23011 to 23016 of 2018.

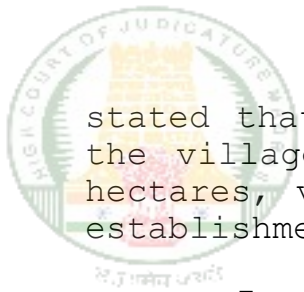
2.In these batch of cases, there are two sets of writ petitions. One filed by one Mr.P.Bensingh, in W.P.(MD) No.3121 of 2020 which is filed as a "Public Interest Litigation" to direct the respondents to remove the encroachment made on both sides of the Colachel to Pechiparai State High way in Survey No.274, Thirparappu Village, Kalkulam Taluk, Kanyakumari District, by considering the representation. Since action was initiated by the authorities, six writ petitions have been filed in W.P.(MD) Nos.23011 to 23016 of 2018 challenging the notice of eviction issued by the second respondent.

3.The Court while entertaining the batch of cases passed an order, dated 31.01.2019, appointing Mr.S.Vinodh, learned Advocate as an Advocate Commissioner to visit the place and find out whether alternate site was allotted to the petitioners and if it is so, whether it is in occupation of the Tribal people or not and to file a report along with photographs.

4. In terms of the directions, the learned Advocate Commissioner has filed his report along with photographs. From the report, it is seen that the six writ petitioners are all Tribals, wherein, it is stated that the six writ petitioners have six individual houses at Marthandam- Pechiparai Main Road and the size of the house is ranging from 200 sq. feet to 300 sq. feet.

5.The learned Advocate Commissioner reports that he cannot find alternate place allotted to the petitioner in Survey No.104 Anbu Nagar, Pechiparai Village, and he sought the help of the villagers and they showed the direction. The learned Advocate Commissioner reached the place around 3.40 p.m. and was informed that the place is under the control of the District Forest Officer, Kulasekaram.

6.The alternate place according to the learned Advocate Commissioner is in Pechiparai panchayat, whereas, the petitioners are in Thirparapu Panchayat and the learned Advocate Commissioner travelled by road and made certain observations, wherein, it is



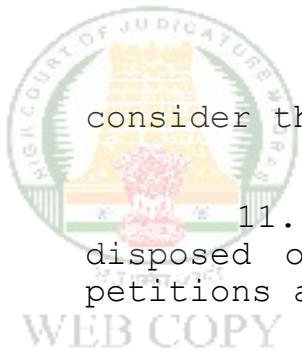
stated that a board has been erected by the officials in front of the village, wherein, it has been stated that patta land is 2.54 hectares, vacant land is 1.46.5 acres and there are 271 residential establishments.

7. Further the Government allotted Block No.45 to the petitioner, namely, Sundari, Block No.43 to Sellachi, Block No.253 to Usha and that was occupied by the Tribals. The other petitioners are not having patta in the said assignment land. Further, it is stated that there are 112 houses and among that, 62 houses were occupied by the Tribal people. Some of which have been constructed by the Tribals themselves.

8. It appears that there was an altercation between the petitioners and the people who were residing there and those people who are residing are not ready to move from the said place at any costs. Thus the problems which is being faced by the officials is not simple as Mr.P.Bensingh, the petitioner in W.P(MD) No.3121 of 2020 has portrayed and it appears to have other wider ramifications.

9. Therefore, the cases cannot be dealt with as normal cases of encroachment into Government land. Because, the six writ petitioners are land less poor and if the land allotted to them has been occupied by the Tribals, who are refusing to move, then the six writ petitioners cannot be summarily dispossessed. There are only two options available. The first is that the Tribal people, who have occupied the land allotted to writ petitioners have to be evicted and writ petitioners have to be put in possession. If according to the official respondents that is not feasible, as it may create law and order problem and other issues in the locality, then suitable alternate site should be identified for the six writ petitioners. However, we are only concerned about one of the photographs which was filed in the writ petition filed by Mr.P.Bensingh, and it is stated that it is the photograph of the road from Colachel to Pechiparai, which is a State High way and we find that there is an encroachment on the road margin and since the road is not always a straight road with lot of undulation and curves, this will pave way for road accidents.

10. Therefore, first priority should be given to relocate the encroachers or persons who are land less poor, who have put up super-structure in the road margin and thereafter, simultaneously, an enquiry can be conducted by the officials and after ensuring that the six writ petitioners are given their land, the originally allotted or given an alternative site. The encroachments made by six petitioners can be removed. However, if one of the six petitioners is an encroacher in the road margin, then he should be dealt with at the first instance. The above exercise shall be carried out in a fair manner preferably, within a period of six months from the date of receipt of a copy of this order. If there are more land less poor in that area, the authorities can also



consider their cases as well.

11. With the above directions, these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Records)

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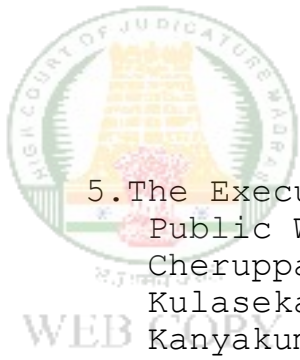
Sub Assistant Registrar(CS)

RM

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 District Collector,
Kanyakumari District,
at Nagercoil.
- 2.The Assistant Divisional Engineer,
State Highways Department,
Thuckalay,
Kanyakumari District
- 3.The Assistant Divisional Engineer,
State Highways Department,
(Construction and Maintenance)
Thuckalay,
Kanyakumari District
- 4.The Thasildar,
Kalkulam Talulk
Kanyakumari District.



5.The Executive Engineer,
Public Works Department,
Cheruppalloor,
Kulasekaram,
Kanyakumari District

+1 CC to M/s.S.C.HEROLD SINGH, Advocate (SR-23645[F] dated 23/07/2021)

+1 CC to M/s.GP (SR-23713[F] dated 23/07/2021)

+1 CC to M/s.P.T.RAMESH RAJA, Advocate (SR-23801[F] dated 23/07/2021)

**W.P. (MD)Nos.3121 of 2020 &
23011 to 23016 of 2018
22.07.2021**

LS (CO)

TR(02.08.2021) 7P 9C