



WEB COPY

W.P.[MD]No.10090 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.P.[MD]No.10090 of 2021

and

W.M.P(MD)No.7812 of 2021

Santhi Nikethan Avenue Kudiirupor Nala Sangam,
Reg.No.SRG/Trichy/27/2020,
Rep. by its President, N.Annamalai,
No.9, Santhi Nikethan,
Rettaivaikal Road,
Trichy.

: Petitioner

Vs.

1.The Commissioner,
Trichy Corporation,
Trichy.

2.The Assistant Commissioner,
Trichy Corporation,
Trichy.

3.P.Aruldoss

: Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings of the second respondent in Na.Ka.No.E1/15047/2020 (nfh/mgp) dated 09.03.2021 and the same as illegal and consequently direct the respondents 1 and 2 to remove the encroachment made by the third respondent in Public Park in Survey No.38/1, 40/1B & 40/2, Santhi Nikethan Avenue, Sozhganallur Road, Uyyangkondan Tirumalai, Trichy District and maintain the same as Public Park.

For Petitioner : Mr.V.Nirmal Kumar

For Respondents 1 & 2 : Mr.S.Saji Bino
Standing Counsel

O R D E R

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

<https://hcservices.ecourts.gov.in/hcservices> We have heard Mr.V.Nirmal Kumar, learned counsel appearing



for the petitioner and Mr.S.Saji Bino, learned Standing Counsel appearing for the respondents 1 and 2 / Corporation.

2.This writ petition filed by a Residence Welfare Association seeks for issuance of Writ of Certiorarified Mandamus, to quash a communication given by the second respondent informing the petitioner's Association that the representation for evicting the encroachment made by the third respondent, cannot be considered as of now, because the third respondent has filed a suit.

3.It is not clear as to how the suit is maintainable, because, even according to the plaint averments, the third respondent would state that the land is classified as a "Vaikkal Poromboke". If that is so, it should be a Government property and if it is a Government property, the question would be whether the suit is maintainable, especially, if it is a water body. However, we find that the said averment made by the third respondent is not supported by any plaint document, whereas, the petitioner's Association has produced a approved layout plan, bearing DTCP approval No.560/88, which shows the area as a "Park". The Park site has been handed over to the Manikandam Panchayat, by a registered Gift Deed, dated 23.12.1988 registered as Document No.52/1989. Further, from the plaint we find that the third respondent claims to be in occupation of the property for 30 years, however, there is no averment in the plaint, as to how he traces title to the property. In such circumstances, the petitioner is before this Court for appropriate direction.

4.The learned Standing Counsel for the respondent Corporation submitted that admittedly, the third respondent is an encroacher and action was initiated to clear the encroachment and there was a threat by the third respondent to self immolate himself and therefore, the proceedings were kept in abeyance and in the mean time, the suit has been filed.

5.Considering the fact that the civil Court has entertained the suit, it would be appropriate to permit the petitioner's Association to implead themselves as one of the defendant in the suit and place before the Hon'ble Court about the orders passed in this writ petition. Since no plaint document has been filed by the third respondent i.e., the document annexed to the plaint and since there is a likelihood that the third respondent may put up some constructions, we direct the Municipal Corporation, not to grant any building plan approval to the third respondent and abide the outcome of the Interlocutory Application / Suit and also conduct periodical checks to ensure that no unauthorised construction is put up by the third respondent.



6. With the above observations, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CSI)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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.

RM
To

1.1.The Commissioner,
Trichy Corporation,
Trichy.

2.The Assistant Commissioner,
Trichy Corporation,
Trichy.

+1 CC to M/s.S.SAJI BINO, Advocate (SR-19383[F] dated 16/06/2021)

+1 CC to M/s.V.NIRMALKUMAR, Advocate (SR-19501[F] dated 17/06/2021)

ORDER MADE IN
W.P.[MD]No.10090 of 2021
15.06.2021

GS (23.06.2021) 3P 5C