



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.06.2021

CORAM :

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P. (MD) .No.18315 of 2014

and

W.M.P. (MD) .No.2 of 2014

1. Thangavel
2. Lakshmi
3. Manikandan
4. Ajji
5. Thangaraja
6. Velankanni
7. Shanmugasundaram
8. Manikandan
9. Sankar
10. Aarayee
11. Sakthivel
12. Thangarasuw
13. Periyasamy
14. Latha
15. Murugesan
16. Varadharajan
17. Periyasamy

...Petitioners

Vs.

1. The State of Tamil Nadu,
represented by the Principal Secretary,
Municipal Administration and Water Supply Department,
Secretariat, Fort St.George,
Chennai.
2. The Secretary to Government,
Scheduled Castes and Scheduled Tribes Welfare Department,
Government of Tamil Nadu, Secretariat,
Fort St.George, Chennai-600 009.
3. The District Collector,
Office of the District Collector, Trichy.
4. The Commissioner of Police,
Office of the Commissioner of Police,
Trichy.



5. The Commissioner,
Trichy Municipal Corporation,
Trichy.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, forbearing the respondent Nos.4 and 5 from evicting the petitioner's families from their dwelling house situated at Poosari Street, Municipal Colony, Chinthamani, Thiruchirappalli except following the due process of law.

For Petitioner : Mr.R.Alagumani

For R-1 to R-4 : Mr.M.Lingadurai
Government Advocate

For R-5 : Mr.N.S.Karthikeyan

ORDER

This Writ Petition has been filed for the issue of a Writ of Mandamus forbearing the fourth and fifth respondents from evicting the petitioners and their families from the dwelling houses without following the due process of law.

2. The case of the petitioners is that they have been residing in small huts for so many years along with their families. It is further stated that the petitioners are doing menial jobs and they have difficulty even to run their day to day life.

3. The grievance of the petitioners is that the fifth respondent started the process of demolishing all the constructions put up in the locality with the help of the fourth respondent for the purpose of putting up a new construction. The petitioners, who have been residing in the place for a long time, are also sought to be evicted forcibly without following the due process of law. Hence, the petitioners made a representation on 29.10.2014 expressing their grievance and requesting the respondents not to evict them and to permit them to reside in small huts, in which, they are dwelling for a long time. Since the same was not considered, the present Writ Petition has been filed before this Court seeking for appropriate directions.

4. The fifth respondent has filed a counter affidavit. The relevant portions in the counter affidavit are extracted hereunder:-

"3. I respectfully submit that the property situated in T.S.No.134 and 135, Trichy, Chinthamani Village, Municipal Colony, Possari



Street, belongs to Trichy Municipal Corporation. Earlier Corporation has constructed row houses in the said property and leased it to the Corporation Basic Service Staffs on monthly rental basis, in the year 1960 after their due retirement they are bound to surrender the said property to the Corporation, but, they didn't handed over the said property given to them when they were in service with the Corporation. I respectfully submit in the said property, Corporation has constructed 38 row houses in the said property and leased out to the Corporation Staffs. The petitioners herein are not the Corporation employees and some of them are working under the Self Help Groups and working in various Departments. I respectfully submit that as the buildings were constructed 70 years back, all the buildings are in dilapidated condition and are not suitable for human habitation. I respectfully submit that residing in the said buildings will be a dangerous thing for any person.

4. I respectfully submit that the above writ petitioners are not the employees of the Corporation and they are encroachers of the Government property. I respectfully submit that as the said 38 houses are declared not fit for habitation, the Corporation has decided to remove those dilapidated buildings and decided to construct 36 new houses vide Block A, B and C and for the said constructions the Corporation has issued notices to the occupancies of those houses to vacate and handed over the vacant possessions for demolishing and reconstruction of old buildings.

5. I respectfully submit that as stated above the petitioners are not the employees of the Corporation and they have no legal right to make claim in respect of the said properties from the Corporation. I respectfully submit that the petitioner has making several baseless allegations in the Writ Petitions. I respectfully submit that the petitioners are encroachers of the Government property and they are not entitled to the relief claimed in the Writ Petition. I respectfully submit that the allegations in Paragraph No.3 that the

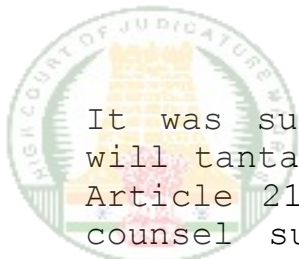


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petitioners are sweepers under the Corporation as false and incorrect. I respectfully submit that out of 38 houses constructed in the year 1960, 18 houses were demolished in the year 2005 and 36 quarters are constructed in the year 2009-2010 in which 36 eligible persons, who have occupied the Government houses and other sweepers working under the Corporation allotted the houses in the new construction. Further, for the development of Trichy Corporation and for converting Trichy into smart city, the buildings constructed in the year 1960, which are in dilapidated constructions are required. Further, 14 petitioners out of 17 petitioners who have filed the present Writ Petition are not residing in the said property. I respectfully submit that only eight houses are occupied by the petitioner Nos.1, 9 and 12 by putting by thatched shed in front of the houses. The first petitioner is attempting to squat the Corporation property by encroaching the same. It is pertinent to note the age of the petitioners in the petitions, they were not at all born at the time of original allotment of houses in the year 1960. Hence, the claims made by the petitioners are not sustainable in the eye of law. The petitioners have not produced any document to show that they are the employees of the respondent Corporation. I respectfully submit that in the absence of such material to show the relationship between the petitioner and the Corporation, the claim of the petitioner are not maintainable.

6. I respectfully submit that the area of the total area of the said property is 3234 square meters, in which new quarters were constructed in 1152 Square meters and a community hall was constructed in 264 square meters area available for construction is about 1436 square meters and the area occupied by the encroachers are about 352 square meters."

5. The learned counsel appearing for the petitioners submitted that the petitioners have been living in the huts for a very long time and they have family card, electricity connection and even the petitioners have paid the house tax. Therefore, the learned counsel submitted that the petitioners cannot be evicted from the property, unless and otherwise, by due process of law.



It was submitted that any forcible eviction of the petitioners will tantamount to interfering with their fundamental rights under Article 21 of the Constitution of India. Therefore, the learned counsel submitted that the respondents must be restrained from interfering with the possession and enjoyment of the property of the petitioners and if at all, they want to resort to eviction, it must be done only in accordance with law after affording opportunity to the petitioners.

6. The learned counsel appearing on behalf of the fifth respondent / Corporation submitted that the petitioners are encroachers, who are preventing the Corporation from putting up houses for the purpose of allotting the same to the employees working in the Corporation. The learned counsel submitted that the petitioners are living in dilapidated structures which may fall down at any time and the petitioners are preventing the Corporation from completing the construction. The learned counsel further submitted that out of the total extent of the property, the petitioners and the other encroachers are occupying nearly 352 square meters and except this portion, new quarters has been constructed in an extent of 1152 square meters and immediately after, the dilapidated structures are demolished, the new building will be constructed in the remaining portion also.

7. The learned counsel appearing for the fifth respondent submitted that the first respondent had already filed a Writ Petition before the Hon'ble Division Court in W.P.(MD).No.17618 of 2014 and the same was withdrawn. Subsequently, the present Writ Petition was filed and the petitioners are virtually preventing the Corporation from putting up the construction for their own employees. Therefore, the learned counsel sought for the dismissal of this Writ Petition.

8. This Court has carefully considered the submissions made on either side and perused the materials available on record.

9. It is not in dispute that the property in question belongs to the fifth respondent Corporation. From the materials placed before this Court, it can be seen that the fifth respondent / Corporation has put up new constructions, which are allotted to the employees of the Corporation. In the counter affidavit, it has been stated that the Corporation has constructed 38 row houses and it has been allotted to the Corporation staff and employees. A stand has also been taken to the effect that except the portion that is under the occupation of the petitioners, all the other portions have been utilised and the construction has also been made.

<https://hcservices.ecourts.gov.in/hcservices> 10. The photographs that have been produced before this



Court shows that the structure that is in the occupation of the petitioners, is in a very dilapidated condition and it may not be safe for the petitioners to continue to reside in those dilapidated structures. In any case, the petitioners cannot make any claim as a matter of right. The fifth respondent Corporation wants to provide accommodation for their staffs and they are intending to put up a new construction in the entire area. The petitioners cannot prevent the same only on the ground that they have been living in the property for a very long time

11. The Writ Petition was filed in the year 2014 and the petitioners have been enjoying the property for nearly seven years even though no interim order was passed in their favour. It is time for the petitioners to vacate the property and hand over the possession to the respondent Corporation in order to enable the fifth respondent / Corporation to demolish the dilapidated structure and put up a new construction in order to allot the same to the staffs belonging to the Corporation.

12. In view of the above, there shall be a direction to the petitioners to vacate and hand over the possession of the property on or before 30.09.2021 to the fifth respondent Corporation. If the petitioners do not come forward to vacate and hand over the possession, it is left open to the fifth respondent / Corporation to take possession of the property and if required with police protection.

13. It will be left open to the petitioners to make a representation before the third respondent seeking for an alternative accommodation and the third respondent shall consider the same by taking into account the social and financial status of the petitioners and the fact that they cannot afford to have any property of their own. Necessary orders shall be passed by the third respondent within a period of eight (08) weeks from the date of receipt of a copy of this order.

14. This Writ Petition stands disposed of with the above directions. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// 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.

To

1. The Principal Secretary,
the State of Tamil Nadu,
Municipal Administration and Water Supply Department,
Secretariat, Fort St.George,
Chennai.
2. The Secretary to Government,
Scheduled Castes and Scheduled Tribes Welfare Department,
Government of Tamil Nadu, Secretariat,
Fort St.George, Chennai-600 009.
3. The District Collector,
Office of the District Collector,
Trichy.
4. The Commissioner of Police,
Office of the Commissioner of Police,
Trichy.
5. The Commissioner,
Trichy Municipal Corporation,
Trichy.

+1 CC to SPL GP (SR-20050[F] dated 23/06/2021)

Order made in
W.P. (MD) .No.18315 of 2014
Dated:
22.06.2021

KM(01.07.2021) 7P 7C