



W.P(MD)Nos.186 and 18637 of 202
REV.APLC(MD)No.166 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.08.2023

CORAM:

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

**W.P(MD)Nos.186 and 18637 of 2020 and
REV.APLW(MD)No.166 of 2023 and
connected miscellaneous petitions**

W.P(MD)No.186 of 2020:-

M/s.Hotel Mayfield (p) Ltd.,
Through its Managing Director R.M.S.Ramasamy,
S/o.Shanmugam Chettiyar,
Plot No.252, K.K.Nagar,
Madurai-625 020.

... Petitioner

-VS-

1. The District Collector,
Dindigul District,
Dindigul.

2. The Engineer,
State Highway Road,
Dindigul District,
Dindigul.

3. The Assistant Engineer,
State Highway Road,
Kodaikanal,
Dindigul District.

4. The Tahsildar,
Kodaikanal,
Dindigul District.

5. The Commissioner,
Kodaikanal Municipality,



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Kodaikanal,
Dindigul District.

6. Alphones

7. Yesuraja

8. Balaji

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 to 5 to remove the encroachments made by the respondents 6 to 8 in T.S.Nos. 33 in Ward-D Block No.21 and TS No.1 in Ward-D, Block No.27, Kodaikanal, in the light of the proceedings bearing Na.Ka.No. 1638/2018/Aa1 dated 03.09.2019 on the file of the 4th respondent based on the petitioner's representation given to the respondents 1 to 3 and 5 dated 30.11.2019.

For Petitioner	: Mr.I.Sam Jegan
For R1 to R4	: Mr.M.Lingadurai Special Government Pleader
For R5	: Mr.T.S.Mohammed Mohideen
For R6 to R8	: Mr.P.M.Vishnuvarthanan

W.P(MD)No.18637 of 2020:-

Alphonse

... Petitioner

-VS-

1. The State of Tamilnadu,
Rep. by The District Collector,
Dindigul District,
Dindigul.

2. The Assistant Divisional Engineer,
Highways Department,
Kodaikanal,
Dindigul District.



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3. The Commissioner,
Kodaikanal Municipality,
Kodaikanal,
Dindigul District.

4. The Tahsildar,
Kodaikanal,
Dindigul District.

5. M/s.Hotel Mayfield (P) Ltd.,
Through its Managing Director R.M.S.Ramasamy,
S/o.Shanmugam Chettiyar,
Plot No.252, K.K.Nagar,
Madurai-625 020.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the entire records pertaining to the impugned proceedings issued by the 2nd respondent vide his proceedings in Na.Ka.No.1/2020/E.Ni.Vu/dated 07-12-2020 and quash the same as *per se* illegal and consequently direct the 2nd respondent to conduct enquiry and hear the objection of the petitioner.

For Petitioner	: Mr.P.M.Vishnuvarthanan
For R1 & R4	: Mr.M.Lingadurai Special Government Pleader
For R3	: Mr.T.S.Mohammed Mohideen
For R5	: Mr.I.Sam Jegan

REV.APLW(MD)No.166 of 2023:-

1. Alphones
2. Yesuraja
3. Balaji

... Petitioners

vs.



W.P(MD)Nos.186 and 18637 of 202
REV.APLC(MD)No.166 of 2023

1. M/s.Hotel Mayfield (P) Ltd.,
Through its Managing Director R.M.S.Ramasamy,
S/o.Shanmugam Chettiyar,
Plot No.252, K.K.Nagar,
Madurai-625 020.

2. The District Collector,
Dindigul District,
Dindigul.

3. The Commissioner,
Kodaikanal Municipality,
Kodaikanal,
Dindigul District.

4. The Tahsildar,
Kodaikanal,
Dindigul District.

... Respondents

Review Application filed under Order 47 Rule 1 read with Section 114 of the Civil Procedure Code, to review the order dated 15.09.2020 passed in W.P(MD)No.11114 of 2020 on the file of this Court.

For Petitioner	: Mr.P.M.Vishnuvarthanan
For R1	: Mr.I.Sam Jegan
For R2 & R4	: Mr.M.Lingadurai Special Government Pleader
For R3	: Mr.T.S.Mohammed Mohideen

COMMON ORDER

[Order of the Court was made by S.S.SUNDAR, J.]

M/s.Hotel Mayfield (P) Ltd., Madurai, has filed W.P(MD)No. 186 of 2020 for issuance of a Writ of Mandamus, directing the respondents 1 to 5 to remove the encroachments made by the



respondents 6 to 8 in T.S.No.33 in Ward-D, Block No.21 and T.S.No.1 in Ward-D, Block No.27, Kodaikanal, in the light of the proceedings bearing Na.Ka.No.1638/2018/Aa1 dated 03.09.2019 on the file of the 4th respondent based on the petitioner's representation given to the respondents 1 to 3 and 5 dated 30.11.2019.

2. It is the case of the petitioner that the lands comprised in T.S.No.1 in Ward-D, Block No.27, Kodaikanal, belong to the Kodaikanal Municipality and the lands in T.S.No.33 in Ward-D, Block No.21 belong to the State Highways. It is the contention of the petitioner that the 6th respondent not only encroached upon the aforesaid lands belong to the Kodaikanal Municipality as well as the State Highways, but also his lands in respect of which the petitioner was given patta and in enjoyment. It is now admitted before this Court that a suit is also filed by the petitioner as against the 6th respondent for permanent injunction in respect of their patta lands and the said suit is pending. It is the case of the petitioner that the prayer in W.P(MD)No.186 of 2020 is confined to the lands vest with the Kodaikanal Municipality and the State Highways.

3. The petitioner in WP(MD)No.186 of 2020 filed a writ petition in W.P(MD)No.11114 of 2020 for issuing a Writ of Mandamus, directing



the respondents 1 to 3 therein, namely, the District Collector, Dindigul, the Tahsildar, Kodaikanal, and the Commissioner, Kodaikanal Municipality, to take appropriate action against the private respondents 4 to 6 therein for their encroachments in T.S.No.33 in Ward-D, Block No.21, Kodaikanal Town. By order dated 15.09.2020, this Court disposed of the said writ petition and taking into consideration the facts projected and the report of the Tahsildar as to the encroachment, a direction was issued to the 2nd respondent therein, namely, the Commissioner, Kodaikanal Municipality, to adhere to due process of law and the principles of natural justice and cause removal of encroachments and to complete the same within a period of 12 weeks from the date of receipt of the copy of the order dated 15.09.2020 passed in that writ petition.

4. Pursuant to the said direction issued to the Kodaikanal Municipality to proceed with removal of encroachment by some of the private respondents including the petitioner in W.P(MD)No.18637 of 2020, the Kodaikanal Municipality issued an eviction notice dated 17.11.2020, in terms of the provisions of the Tamil Nadu District Municipalities Act, 1920, to the review applicants namely, Alphones, Yesuraja and Balaji, for removing the encroachments put up by them in an extent of 74.00 square meters in T.S.No.33, Block No.21, Ward-D



belong to the Kodaikanal Municipality. As regards the direction issued to the State Highways in W.P(MD)No.11114 of 2020, dated 07.12.2020, the Assistant Divisional Engineer, Construction & Maintenance, Kodaikanal, issued an eviction notice under Section 28(i) and (ii) of the Tamil Nadu Highways Act, 2001, to the review applicants namely, Alphones, Yesuraja and Balaji, directing them to remove the encroachment put up by them in the Highways' land. Challenging the said eviction notice, the first review petitioner namely, Alphonse, filed a writ petition in W.P(MD)No.18637 of 2020. Contending that without affording any opportunity to place their objections, W.P(MD)No.11114 of 2020 was disposed of by this Court, the private respondents namely, Alphones, Yesuraja and Balaji have filed a review application in REV.APLW(MD)No.166 of 2023.

5. Since the facts and issues raised in all these cases are identical, this Court is of the view that all the cases should be disposed of by this common order.

6. Heard Mr.I.Sam Jegan, learned counsel for the petitioner in W.P(MD)No.186 of 2020, Mr.P.M.Vishnuvarthanan, learned counsel for the petitioner in W.P(MD)No.18637 of 2020 and review applicants in REV.APLW(MD)No.166 of 2023, Mr.T.S.Mohammed Mohideen, learned



counsel for the Kodaikanal Municipality and Mr.M.Lingadurai, learned Special Government Pleader appearing for other official respondents.

7. The dispute is in respect of different fields of lands adjoining the property of the petitioner in W.P(MD)No.186 of 2020. Though pursuant to the direction issued in W.P(MD)No.11114 of 2020, dated 15.09.2020, the Assistant Divisional Engineer, State Highways, issued eviction notices dated 07.12.2020 to the review applicants, the 1st review petitioner namely, Alphonse alone has chosen to challenge the said eviction notice by filing W.P(MD)No.18637 of 2020 contending that without conducting any enquiry and without considering the pendency of the civil suit in this regard, the said eviction notice dated 07.12.2020 has been issued. However, the petitioner in W.P(MD)No. 18637 of 2020 has not questioned the competency of the Highways Department, Kodaikanal, to initiate such eviction proceedings.

8. The question is whether the petitioner in W.P(MD)No.18637 of 2020 is in encroachment of any portion of the public land which vests with either the Kodaikanal Municipality or the State Highways.

9. The following facts are not in dispute:-

The lands comprised in T.S.No.1 in Ward-D, Block No.27,



Kodaikanal, belong to the Kodaikanal Municipality and the lands in T.S.No.33 in Ward-D, Block No.21 belong to the State Highways. The petitioner in W.P(MD)Nos.186 of 2020 and 11114 of 2020 claim ownership over 81½ of cents and 7.41 cents of lands respectively in T.S.Nos.32 and 12, Ward D, Block No.21, Kodaikanal Town and adjacent to the said lands, there is a Ghat Road and Municipality Road in T.S.Nos.1 and 33 respectively. According to the petitioner in W.P(MD)No.186 of 2020, the petitioner in W.P(MD)No.18637 of 2020 not only encroached upon the said public lands, but also a portion of their lands in T.S.Nos.32 and 12 and prevented the ingress and egress of the petitioner in W.P(MD)Nos.186 of 2020 into their lands. With regard to the encroachment of their patta lands by the petitioner in W.P(MD)No.18637 of 2020, the petitioner filed a suit in O.S.No.40 of 2018 before the District Munsif Court, Kodaikanal, for permanent injunction and mandatory injunction in respect of their property and the suit is pending.

10. According to the petitioner in W.P(MD)No.18637 of 2020 and the first review petitioner in REV.APLW(MD)No.166 of 2023, she is the owner of the property in Plot No.52 in T.S.No.18 vide assignment patta issued in the year 1979 and adjacent to the said land, the petitioner in W.P(MD)No.186 of 2020 has purchased properties in



T.S.Nos.32 and 12 and in order to construct a hotel, when the petitioner in W.P(MD)No.186 of 2020 approached the petitioner/Alphonse in W.P(MD)No.18637 of 2020 to purchase her property, she declined. Hence, in order to disturb her enjoyment, the petitioner in W.P(MD)No.186 of 2020 filed W.P(MD)No.11114 of 2020 alleging encroachment by the review applicants which ultimately ended in issuance of the eviction notice dated 07.12.2020 impugned in W.P(MD)No.18637 of 2020. The petitioner in W.P(MD)No.18637 of 2020 also filed a suit in O.S.No.39 of 2018 before the District Munsif Court, Kodaikanal, for permanent injunction in respect of her property.

11. There is no dispute with regard to the ownership of the respective properties of the petitioners in both the writ petitions. However, the dispute appears to be the actual extent and the boundaries of their respective properties. While the petitioner in W.P(MD)No.18637 of 2020 says that she is not in encroachment of any land belongs to either the local body or the Highways Department, all other parties reiterate that she is not only in encroachment of the public land belongs to the local body as well as the Highways, but also the property of a private person who is the petitioner in W.P(MD)No. 186 of 2020, for which, a civil suit is pending. Likewise, the petitioner



in W.P(MD)No.18637 of 2020 has also filed a civil suit for permanent injunction in respect of her property which is also pending. Therefore, the dispute between the petitioners in both the writ petitions relating to their patta lands may be resolved in the two suits pending before the Civil Court.

12. As far as the encroachment of public lands alleged to have been made by the petitioner in W.P(MD)No.18637 of 2020, this Court finds that the Tahsildar, Kodaikanal, has come by way of a report acknowledging the encroachment by the petitioner in W.P(MD)No. 18637 of 2020. However, now the learned counsel for the petitioner would urge that no survey was conducted in the presence of the petitioner fixing the boundary and to demarcate whether the petitioner in W.P(MD)No.18637 of 2020 is in encroachment of any public land either belonged to the local body or the State Highways.

13. In such circumstances, this Court is inclined to pass the following order:-

(i) The Tahsildar, Kodaikanal, is directed to conduct a survey with the assistance of the Town Planning Officer, Kodaikanal Municipality and identify whether the petitioner in W.P(MD)No.18637 of 2020, or review petitioners or any one, are in encroachment of any



portion of lands belonged to the local body or the State Highways.

(ii) Before conducting such survey, notice shall be issued to the petitioners in W.P(MD)Nos.186 and 18637 of 2020 and the review petitioners. The notice shall also be served on the local body as well as the State Highways so that all the parties can be present at the time of survey.

(iii) The Tahsildar, after conducting survey, shall draw a report pointing out the boundary and demarcation with measurements clearly indicating whether the petitioner in W.P(MD)No.18637 of 2020, or the review petitioners or any one, are in encroachment of the public lands in question.

(iv) The report of the Tahsildar shall also be served on the petitioners in both the writ petitions, review petitioners, the local body and the Highways Department.

(v) If the report reveals encroachment by the petitioner in W.P(MD)No.18637 of 2020, or the review petitioners or any one, the local body as well as the State Highways are directed to initiate action for removal of encroachment under appropriate laws by following the procedure prescribed.

(vi) The whole exercise shall be concluded within a period of four weeks from the date of receipt of the report of the Tahsildar being served on the petitioners, review petitioners, the local body as well as



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the State Highways.

(vii) As regards the dispute between the petitioners in both the writ petitions relating to their patta lands, it is for them to establish their rights in the pending suits.

(viii) The petitioner in W.P(MD)No.18637 of 2020 is directed to maintain status quo as on today till the proceedings are concluded as directed by this Court in the manner as indicated above.

(ix) When notices are issued to the petitioners in both the writ petitions and the review petitioners, they shall co-operate with the authorities to carry out the survey as directed by this Court. In case, they are not present at the time of survey, it is open to the authorities to proceed further in accordance with law.

14. With the above direction, both the Writ Petitions and Review Application are disposed of. No costs. Connected miscellaneous petitions are closed.

[S.S.S.R, J.] [D.B.C., J.]
22.08.2023

Index : Yes / No
Neutral Citation : Yes / No
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To

1. The District Collector,
Dindigul District,
Dindigul.

2. The Engineer,
State Highway Road,
Dindigul District,
Dindigul.

3. The Assistant Divisional Engineer,
Highways Department,
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4. The Commissioner,
Kodaikanal Municipality,
Kodaikanal, Dindigul District.

5. The Tahsildar,
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Dindigul District.



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