



W.P.(MD)No.7738 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 13.06.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.7738 of 2023
and
W.M.P.(MD)No.7189 of 2023

1.Ilamathi

2.Pandiammal

3.Kumar

4.Usha

5.Kavitha

6.Rani

7.Kanagambal @ Thenmozhi

8.Backiyam

9.Kaliammal

... Petitioners

Vs.

1.The Commissioner,
Devakottai Municipality,
Devakottai Municipal Office,



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Devakottai,
Sivagangai District.

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2. Vallivilas Kovil Private Trust,
Represented by its Secretary, Ward A, Block 20,
Devakottai Town, Devakottai Taluk,
Sivagangai District.
(R2 is implied vide order dated 24.04.2023
in W.M.P.(MD)No.8444/2023)

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the impugned order made by the respondent in his proceedings in Na.Ka.No.4797/2021/F1, dated 28.03.2023 and quash the same as illegal insofar as the petitioners are concerned.

For Petitioners :Mr.M.Mahaboob Athiff

For Respondents :Mr.K.R.Bharathi Kannan
Standing Counsel for R1
: Mr.RM.Arun Swaminathan for R2

ORDER

Heard the learned counsel on either side.

2. One Sornam filed W.P.(MD)No.15562 of 2021 for removing encroachment in the petition mentioned water course. It was disposed of on 27.10.2022 in the following terms:-



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“4. In view of the above, without going into the merits of the claim made by the petitioner, the authorities concerned are directed to consider the representation of the petitioner, dated 06.03.2021 and pass appropriate orders, on merits and in accordance with law. If there is any encroachment as claimed by the petitioner, after issuing notice and conducting survey in the presence of the petitioner and all other parties concerned, the authorities concerned are directed to take necessary action for removal of encroachment, after affording sufficient opportunity of personal hearing to all the parties concerned and by following due process of law, within a period of eight weeks from the date of receipt of a copy of this order.”

The Commissioner of Devakottai Municipality was the respondent against whom direction was given. Some of the petitioners herein figured as private respondents. Pursuant to the direction given by this Court, the impugned notice dated 28.03.2023 came to be issued. Challenging the same, the present writ petition has been filed.

3. The learned counsel appearing for the petitioners contended that the property in question is a private property and therefore, Section 362 of the Tamil Nadu District Municipalities Act, 1920 cannot be invoked. He also submitted that the petitioners herein are extremely poor persons and they cannot be thrown out summarily. He pressed for setting aside the order impugned in the writ petition.



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4. We went through the records enclosed in the typed set of papers. It is seen that the petition mentioned property is comprised in T.S.No.1, Block 20, Ward A, Devakottai Municipality. As per the revenue records, it has been classified as Kulakkal (water channel). The water channel obviously cannot vest in a private body or in a private person. It is the Government of the local body in which it can be vested. Admittedly, the petitioners herein have not produced any material to show their title over the same. Therefore, we are not inclined to interfere with the impugned communication. However, the facts and circumstances obtaining in this case cannot be lost sight of. The petitioners are residents. They have not put up any commercial establishment. Therefore, even if they have encroached on a water body, still they cannot be peremptorily thrown out. We grant six months time to the petitioners to voluntarily vacate and relocate to any other place. The impugned communication shall not be enforced till then. The petitioners are also given liberty to approach the District Collector, Sivagangai with a request to allot any alternative site in the meantime. The District Collector, Sivagangai is directed to consider the applications that may be submitted by the petitioners and allot alternative sites if the petitioners are eligible. Final order on the petitioner's application shall be passed within twelve weeks from the date of receipt of the applications. If the



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petitioners fail to vacate at the end of the six months, it is open to the authorities to summarily vacate the petitioners without any further notice.

5.The Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

[G.R.S., J.] [B.P., J.]
13.06.2023

NCC : Yes / No
Internet : Yes / No
Index : Yes / No
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and

B.PUGALENDHI, J.

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