



W.P.(MD)No.23145 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

W.P.(MD)No.23145 of 2023

and

W.M.P.(MD)Nos.19339, 19342, 19344 & 19345 of 2023

- 1.Heldon Selva Kumar
 - 2.Jacob @ Jacob Selva Rajan
 - 3.Rajan
 - 4.Selvin
 - 5.Sekar @ Kathi Sekar
 - 6.Iruthayadhas @ Eruthayadhas
 - 7.Mesiyadhas @ MessiaDhas
 - 8.Shajin
 - 9.Eldan @ Elden
 - 10.Aji @ Verjin Selvakumari @ Verjin Selva Kumari
 - 11.Rejila @ Rejila Thanja Kumari
 - 12.Anisha @ Anisha Rajan
 - 13.Sheela
 - 14.Karleenal
 - 15.Anob
 - 16.Alwin @ Alwin Vincent
 - 17.Pravin @ Brabin
 - 18.Esther Sheeba
 - 19.Kingsly
 - 20.David Rajan
 - 21.Rethna Thurai
- ... Petitioner



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Vs.

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- 1.The District Collector,
Kanyakumari District, At Nagercoil.
- 2.The Superintendent of Police,
Kanyakumari District, At Nagercoil.
- 3.The Secretary,
Bar Council of Tamil Nadu and Puducherry
High Court Gate No.4, N.S.C.Bose Road,
Chennai-600 014.
- 4.The Sub-Collector / Revenue Divisional Officer,
Padmanabhapuram Sub Division,
At Thuckalay, Kanyakumari District.
- 5.The Assistant Director,
Survey and Land Records,
Kanyakumari District, At Nagercoil.
- 6.The Tahsildar,
Killiyur Taluk, Kanyakumari District.
- 7.The Executive Officer,
Palapallam Town Panchayat,
Kanyakumari District.
- 8.The Inspector of Police,
Karungal Police Station,
Kanyakumari District.
- 9.The Sub-Inspector of Survey,
Killiyoor Taluk, Kanyakumari District.
- 10.Esakki Durai



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- 11.Mahesh
- 12.A.Abirajasfrad
- 13.Amirth George
- 14.Bibin Gnanakumar
- 15.Jeyaram
- 16.ChristhPerjith
- 17.Joseph Raj
- 18.Adlin Davi
- 19.Shanmugam
- 20.Berlin Jegatheesh

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 to 8 to remove the unauthorized construction of wall put up by the 12th and 13th respondents in Re.Sy.No. 371/26 in Keezhmidalam B Village, Killiyoor Taluk, Kanyakumari District in violation of the provisions of Tamil Nadu Urban Local Bodies Act, 1998 and to take appropriate action against the persons and official respondents involved in the illegal construction of wall in Re.Sy.No. 371/26 in Keezhmidalam B Village, Killiyoor Taluk, Kanyakumari District by misuse and abuse of power and by committing professional misconduct by the Respondent Advocates 14 to 20 in violation of the Advocates Act and further, directing the respondents 10 to 20 to pay compensation and damages of Rs.25 Lakhs to all the petitioners.

For Petitioners : Mr.M.P.Senthil

For Mr.M.R.Sreenivasan

For R1, R4 to R7 : Mr.M.Lingadurai,

Special Government Pleader



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For R2, R8 & R9 : Mr.Veeranthiran,
Government Advocate

For R12 & R13 : Mr.J.Barathan

ORDER

(Order of the Court was made by ***S.M.SUBRAMANIAM, J.***)

The lis on hand has been instituted to direct the respondents 1 to 8 to remove the unauthorized construction of wall put up by the 12th and 13th respondents in Re.Sy.No. 371/26 in Keezhmidalam B Village, Killiyoor Taluk, Kanyakumari District in violation of the provisions of Tamil Nadu Urban Local Bodies Act, 1998 and to take appropriate action against the persons and official respondents involved in the illegal construction of wall in Re.Sy.No. 371/26 in Keezhmidalam B Village, Killiyoor Taluk, Kanyakumari District by misuse and abuse of power and by committing professional misconduct by the respondents 14 to 20 / Advocates in violation of the Advocates Act and further, to direct the respondents 10 to 20 to pay compensation and damages of Rs.25 Lakhs to all the petitioners.

2.Twenty one Writ Petitioners, who are all residents of Palapallam Village, Kanyakumari District, filed the present Writ Petition. The complaint by



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the writ petitioners before us is that the respondents 12 and 13 with the aid of the Police officials ie., respondents 10 and 11 as well as the respondents 14 to 20, who are all practicing Advocates of Eraniel Bar Association, Kanyakumari District, put up unauthorized constructions and permanently, obstructed the writ petitioners to have free access to the main road. The petitioners have stated that the Advocates have facilitated for putting up illegal and unauthorized construction in collusion with the Police and have done Katta Panchayat to achieve the illegal object.

3.The 1st petitioner, who sworn the affidavit filed in support of this petition, is a registered medical practitioner / Doctor by profession and now, working at Asaripallam Medical College Hospital and his wife is a staff nurse. Further, he is a differently abled person with 75% of locomotor disability and for transportation he possesses two adoptive four wheeler. The property comprised in R.S.No.371/26, Keezhlamidalam B Village, Killiyoor Taluk, Kanyakumari District is an access to Karungal to Colachel Main Road for him. Other writ petitioners are also using the subject property as access to reach their respective residential houses from Karungal to Colachel Main Road. Except above access in R.S.No. 371/26, the 1st petitioner Doctor and other writ petitioners have no other alternative access or pathway from Karungal - Colachel Main Road.



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4.The learned counsel appearing for the petitioners mainly contended that the respondents 12 and 13 in collusion with the Police authorities and practicing Advocates of Eraniel Bar Association, constructed compound wall unauthorizedly and thereby, prevented the petitioners from having free access to main road ie., Karungal - Colachel Main Road. He reiterated that the portion of the land was classified as pathway and therefore, unauthorized construction put up by the contesting respondents is to be demolished to have a free access to the writ petitioners, who are all residing in that locality.

5.*Prima facie* this Court satisfied that the petitioners were prevented to have free access to Karungal to Colachel Main Road from their respective residences and passed an interim order to demolish 9 feet of compound wall, so as to have free access to the main road. Since the contesting respondents have not removed, this Court had directed the respondents 1 and 2 to clear the obstructions to an extent of 9 feet by demolishing the compound wall constructed by the contesting respondents and submit a report.



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6.The learned counsel appearing for the contesting respondents / respondents 12 & 13 strenuously objected the contentions raised by the writ petitioners by stating that the contesting respondents have constructed the compound wall in their patta land and they have not committed any illegality. The practicing lawyers assisted the contesting respondents to establish their right and therefore, the allegations set out in the Writ Petition are false and incorrect. However, the learned counsel appearing for the contesting respondents at the time of earlier hearing had given an undertaking that the respondents 12 and 13 themselves will demolish 9 feet compound wall, so as to provide free access to the residents of that locality. The said undertaking was given by way of interim arrangement without prejudice to their right, which is to be established before the competent civil Court of law through documents and evidences.

7.Considering the seriousness involved and taking note of the plight of the writ petitioners, who are all residing and prevented from having free access to Karungal - Colachel Main Road, we have directed the respondents 1 and 2 to conduct field inspection and ensure that 9 feet compound wall is demolished and an access has been provided. The relevant paragraphs of the report submitted by the 1st respondent reads as under:-



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“5) I submit that the property disputed is a portion of R.S.No.371/26A of Keezhmidalam B Village. The above field measuring 0.03.50 hectares is a patta land which stands registered in the name of Thiru. Heldon Selva Kumar/the petitioner herein vide patta number 4151 On ground the above property lies adjacent to the left side of Karungal to Colachel main road near Pallapallam Junction. The four boundaries of the above property are,

North : R.Sy.No : 371/24&25 Patta land

South : R.Sy.No : 371/268&29A Patta land

East : R.Sy.No : 371/27 Patta land

West: R.Sy.No : 373 Karungal to Colachel road

371/40 Patta land of 12th Respondent

6) I respectfully submit that the western boundary line separating R.Sy.No.371/26A with the Road poramboke in R.Sy.No. 373 is 6 meters as per the relevant survey sketch (FMB). An extent of 0.860 cents in the south eastern side of the property was under the occupation of the 12th respondent. The 12th respondent has constructed a small room in the occupied area and stretched out a compound wall covering the western boundary of the occupied portion whereby blocked the frontage of petitioners property leaving only 3.25 feet gap for the petitioner to access the public road in the west. The total length of the compound wall constructed by the 12th respondent was 5 meters. On the wake of the orders of the Hon'ble court the Tahsildar, Killiyoor has fixed the western boundary of R.Sy.



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No.371/26A and on 30.11.2023 the combined team of the Revenue and the local body staff have removed 2.74 meters (9 feet) length of the unauthorized compound wall constructed therein. During my inspection I realized this action of the authorities have cleared the hindrance to the petitioner in using the pathway to access his house in R.Sy.No.371/26A. The petitioner drove his car to home through the pathway without any difficulties in my presence. In order to provide better access, on spot arrangements were made to lay a temporary pathway having a width of 9 feet and a lamp post was shifted.

7) I respectfully submit that the construction made by the 12th respondent in the disputed patta land is found to be an unauthorized building constructed without any permission of the local body concerned. I hereby submit that WP (MD) No. 19919 of 2023 regarding the land dispute is pending at this Hon'ble Court. I have directed the 7th respondent Executive Officer Pallapallam Town Panchayat to cause a notice of eviction upon the wrong doer and take appropriate action to expel him by observing due process of law.”

8.The 1st respondent has personally inspected the property with the assistance of the revenue officials and conducted survey and categorically arrived a conclusion that the 12th respondent in the disputed patta land has put up unauthorized building without obtaining any permission from the local body concerned. Therefore, the 1st respondent directed the 7th respondent Executive



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Officer, Palapallam Town Panchayat, Kanyakumari District to issue notice of demolition and to take appropriate action by observing due process of law.

Pursuant to the same, the 7th respondent has issued a notice and the said notice has already been affixed in the building. A copy of the same has been produced before this Court. It is needless to state that unauthorized construction in the location is to be measured and to be demolished by the 7th respondent. The contesting respondents in response to the notice is permitted to submit their objections, if any and the same also shall be considered by the authorities competent, while passing final orders for demolishing the unauthorized construction.

9.The report of the 1st respondent would be sufficient for us to arrive a conclusion that the petitioners are entitled to have 9 feet access to reach their respective residences from Karungal - Colachel Main Road and such 9 feet pathway is to be protected by the authorities. However, such access is subject to the claim of title between the parties, which is to be adjudicated before the civil Court. Till such time the civil litigation reaches finality, 9 feet pathway now left open for the usage of the petitioners should not be disturbed by any person. In the event of any complaint of further obstructions or otherwise, the jurisdictional Police on receipt of any such complaint is bound to initiate all appropriate actions to protect the pathway provided for the benefit of the writ petitioners.



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10.The materials submitted before us, including the photographs, would establish that there were interferences by the practicing Advocates and the jurisdictional Police of that locality. We are unhappy with the Advocates, who have unnecessarily interfered in a private dispute beyond their professional reach and also we record our displeasure towards the Police authorities, involving and negotiating the disputes of civil nature.

11.As far as the respondents 10 and 11 are concerned, the 10th respondent is the Inspector of Police, Karungal Police Station, Kanyakumari District. Since he is on medical leave, one J.Sangeetha Anbu Juliet is holding additional charge of the Inspector of Police, Karungal Police Station. In view of the fact that the respondents 10 and 11 have exceeded their powers in performing their public duties, the 2nd respondent is directed to transfer these two officials to any other stations, since their presence in Karungal Police Station may create further issue. He is further directed to have discreet watch over their performance of public duties atleast for further period of six months from the date of receipt of a copy of this order.



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12.In respect of practicing Advocates of Eraniel Bar Association ie., respondents 14 to 20, we are *prima facie* satisfied that they have also exceeded their professional limits and interfered with the civil dispute between the parties by way of private negotiations. These lawyers have stood in the ground of dispute and negotiated with the parties. Many other allegations are raised by the writ petitioners against these lawyers. In this regard, the writ petitioners are at liberty to file an appropriate complaint before the Bar Council of Tamil Nadu and Puducherry / 3rd respondent. On receipt of any such complaint, the 3rd respondent may take cognizance and deal with the issues in the manner contemplated under the statute and rules in force.

13.With the above directions, this Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

(S.M.S., J.) & (V.L.N., J.)
08.12.2023
(1/3)

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

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S.M.SUBRAMANIAM, J.

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