



W.P. (MD) No.2538 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 06.02.2024

PRONOUNCED ON : 14.02.2024

CORAM:

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

W.P(MD).No.2538 of 2024
and WMP(MD).No.2534 of 2024

S.Selvaraj

...Petitioner

Vs

**1.The District Collector
Dindigul District
Dindigul**

**2.The Tahsildhar
Athur Taluk
Dindigul District**

**3.The Block Development Officer
Athur Union
Sempatty
Dindigul District**

**4.Mr.Patric Premkumar
The President
Vakkampatty Village Panchayat
Athur Taluk
Dindigul District**



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5.Tamilselvan

....Respondents

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Prayer : Writ Petition has been filed under Article 226 of Constitution of India to issue a writ of Mandamus, forbearing the respondents 1 to 4 from evict the “St.Mary Magdaleny” Church situated in S.Nos.176/1 and 176/2 at Vakkampatty Village, Athur Taluk, Dindigul District in due process of law.

For Petitioner : Mr.N.Marimuthu
For R1 to R3 : Mr.N.Satheeshkumar
Additional Government Pleader
For R5 : Mr.M.Karthikeya Venkatachalapathy

ORDER

(Made by **R.VIJAYAKUMAR,J.**)

The present writ petition has been filed seeking a mandamus forbearing the official respondents from evicting the “St.Mary Magdaleny” Church situated in S.Nos.176/1 and 176/2 at Vakkampatty Village, Athur Taluk, Dindigul District unless by due process of law.

Contentions of the Counsels:

2.According to the learned counsel appearing for the writ petitioner the Church was constructed in the above said survey numbers more than 150 years



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ago and without any objection from any one of the general public, the Prayers are being offered. In the year 2010, when the Church was renovated, the villagers have objected to the same claiming that the vacant place situated in and around the said Church belongs to them. A Peace Committee Meeting was conducted wherein both the parties agreed not to put up any construction in Survey Nos.176/1, 177/1 and 177/2.

3. Without being satisfied with the said statement, the fifth respondent and others had filed O.S.No.452 of 2010 before the Additional District Munsif Court, Dindigul for the relief of declaration that these survey numbers are common properties and for a permanent injunction not to prevent them from using the said common property. The suit was dismissed on 18.07.2018. The fifth respondent and others had filed A.S.No.122 of 2018 before the Additional Subordinate Court, Dindigul. The Appellate Court was pleased to dismiss the appeal on 30.03.2022. Hence, according to the learned counsel appearing for the writ petitioner, the earlier attempt made by the fifth respondent and others was not successful.

4. The learned counsel had further contended that the fifth respondent had filed W.P(MD).No.29865 of 2023 before this Court for a mandamus to direct



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the official respondents to remove the encroachment of these survey numbers.

In the said writ petition, the Church was not made as a party. The writ Court after hearing the official respondents had passed an order on 15.12.2023 directing the authorities to remove the encroachment, if any, within a period of 12 weeks.

5.On 15.12.2023, the Tahsildhar had issued a notice to the Surveyor and the Revenue Inspector to inspect the property on 09.01.2024, conduct a survey and file a report. The Secretary of Christian Makkal Sabai had filed a suit before the Principal Subordinate Court, Dindigul on 30.01.2024 seeking declaration of title and permanent injunction for the said property and the suit is yet to be numbered. According to the writ petitioner, the official respondents are attempting to remove the Church without following due process of law. Hence, the present writ petition.

6.The learned counsel appearing for the fifth respondent had contended that Survey Nos.176/1 and 176/2 are Government poromboke properties and therefore, the eviction proceedings initiated by the official respondents are strictly in accordance with law. The petitioner has not yet numbered the civil



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suit which he said to have filed on 30.01.2024. Hence, he prayed for dismissal of the writ petition.

7.The learned Additional Government Pleader appearing for the official respondents had contended that when an attempt was made to survey the property on 09.01.2024, it was objected to by the writ petitioner and therefore, the survey could not be conducted. After conducting survey, they would proceed in accordance with law, in case, if they found any encroachment.

8.We have carefully considered the submissions made on either side and perused the material records.

Discussion:

9.A suit in O.S.No.452 of 2010 has been filed by six plaintiffs as representatives of Vakkampatty Village on the file of Additional District Munsif Court, Dindigul. In the said suit, the District Collector and other Revenue Officials are parties. The Church has been arrayed as the fourth respondent. (Defendants 4 to 6 in the said suit are represented Catholic General Public of Vakkampatty Village). The suit had been filed for the relief of declaration that Survey Nos.176/1, 177/1 and 177/2 are common properties of



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the general public and for a permanent injunction restraining the Catholic General Public from putting up any construction over the said property. The suit was dismissed by the trial Court. However, in paragraph No.18 of the judgment, the trial Court has given a specific finding that those survey numbers are government properties and the said finding has also been confirmed by the First Appellate Court in A.S.No.122 of 2018. Therefore, it is clear that those survey numbers are Government properties.

10.The revenue records produced by the writ petitioner reveal that Survey No.176/1 is shown as Government poromboke and Survey No.176/2 is shown as Sarkar Manai. In the remarks column for Survey No.176/1, it is mentioned as Madhakovil. Already proceedings have been initiated by Tahsildhar, Athur for conducting a survey for Survey Nos.176/1, 2, 3, 14, 177/1 and 177/2 in Vakkampatty Village, Athur Taluk by proceedings dated 15.12.2023.

11.It is the contention of the learned Additional Government Pleader that they were not permitted to conduct survey on 09.01.2024. Unless a survey is conducted, it is difficult to identify the encroachment in the Government properties.



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Conclusion

12. In view of the above said facts, we are inclined to pass the following order:

(i) The second respondent herein shall proceed to conduct a survey as per his memo dated 15.12.2023 in the presence of the writ petitioner and the fifth respondent herein.

(ii) After survey, if any encroachment is found in the Government property, the second respondent shall initiate proceedings under the Tamil Nadu Land Encroachment Act and after giving due opportunity to the writ petitioner, shall remove the encroachment by following due process of law.

13. The writ petition is disposed of with the above said directions. No costs. Consequently, connected miscellaneous petition is closed.

(D.K.K.J.,)

(R.V.J.,)

14.02.2024

Index :yes
Internet :yes
NCC : Yes/No
msa



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To

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Dindigul District
Dindigul

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Dindigul District



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**D.KRISHNAKUMAR, J.
AND
R.VIJAYAKUMAR, J.**

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Pre-delivery Order made in
W.P(MD).No.2538 of 2024
and WMP(MD).No.2534 of 2024

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