



W.P(MD)No.9805 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.06.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.9805 of 2024

and

W.M.P.(MD)Nos.8904 and 8906 of 2024

1.R.Gandhi

2.S.Rajakumari

... Petitioners

Vs.

1.The District Collector,
Theni District, Theni.

2.The Tahsildar,
Taluk Office,
Aundipatti Post,
Theni District.

3.The Executive Officer,
Town Panchayat Office,
Aundipatti Post,
Theni District.

4.C.Sureshpandi

5.Sathappan

6.Murugappan

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the 3rd respondent



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herein to implement the Resolution No.46 dated 13.3.2024 passed by majority of 3rd respondent Town Panchayat, for removing the unlawful and unauthorized drainage in the patta lands of petitioners in Survey No.720/1A, Kamarajar Nagar 2nd Street, Aundipatty Post, Theni District, and for proper construction of drainage channel in the 2nd Street 16th Ward, Kamarajar Nagar, Aundipatty Post, Theni District, pending disposal of the above writ petition.

For Petitioners : Mr.K.Appadurai

For Respondents : Mr.N.GA.Nataraj,
Government Advocate for R1 to R3.
Mr.Ajmalkhan, Senior Counsel,
For Mr.K.Poonnaiah for R4.

ORDER

Heard the learned counsel for the writ petitioner, the learned Government Advocate for the respondents 1 to 3 and the learned senior counsel for the fourth respondent.

2.The petitioners herein want this Court to enforce the petition mentioned resolution passed by the town panchayat.

3.When the matter was taken up for hearing, it has been stated that the proposed move is structurally not feasible. In any event, it is not for the Writ Court to direct enforcement of resolution passed by the local bodies. That is



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left to the wisdom of the executive concerned. A writ petition will not lie for such reliefs.

4.Coming to the merits of the matter, it is seen that the first petitioner herein had blocked the flow of a drainage water. It is seen that the land in question was purchased by the first petitioner in the year 2015. Admittedly, the land in question is a patta land belonging to the first petitioner. The rights of pattadar cannot be casually be interfered with. At the same time, one has to take note of the prevailing realities. It is too obvious from the materials on record that there was flow of a drainage water for the last several years. Such a flow cannot be suddenly blocked by the pattadar. If according to the pattadar, it causes nuisance, then he will have to avail remedies that are available to him in law. He has not done so. He has not obtained interim order from the jurisdictional civil Court. Instead, he has chosen to block the flow of drainage water on his own.

5.It is very well open to the authorities to ensure that drainage water flow as before. The authorities will however bear in mind the fact that the water flows only through the patta land of the first petitioner and that therefore, the first petitioner must be appropriately compensated. The first petitioner's



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grievance appears to be that if the water flows like before, it will affect the structural stability of his house. This concern deserves to be addressed. In fact the case was adjourned on more than one occasion to enable the official respondents to come out with a specific offer. The respondents have come out with a clear proposal that by laying pipes, the water can flow through pipes and the structural safety of the building will not be affected. It is also proposed that filters can be installed at appropriate places so that the flow of drainage water through the drainage pipe so proposed to be installed is not at all blocked.

6.I permit the respondents 1 to 3 to take steps to ensure the original flow of drainage water. They will not however do so by ignoring the statutory rights of the first petitioner herein. It is stated that the length of drainage channel is about 60 feet and that the market value of the property would come to Rs.30,000/- approximately. The first respondent before restoring the flow of water will have to pay a sum of Rs.30,000/- to the first petitioner directly. It is open to the first petitioner herein to accept the said amount without prejudice to his rights to seek enhancement. If the first petitioner refuses to accept the payment, the said amount shall be deposited in the name of the first petitioner and thereafter flow of drainage water can be resumed. At the same time, the local body will put up a pucca pipe so that the structural stability of the first



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petitioner's building is not at all affected. The filters will also be installed outside the respective houses through which the drainage water will flow so that there is no blockade of the drainage water. In other words, all possible steps shall be taken by the local body to ensure that the rights of the first petitioner are protected. It is also open to the local body to negotiate with the first petitioner herein to ensure that the rights of the first petitioner are respected as well as public interest is also upheld.

7.This writ petition is disposed of with the aforesaid directions. No costs. Consequently, connected miscellaneous petitions are closed.

07.06.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:-

- 1.The District Collector,
Theni District, Theni.
- 2.The Tahsildar,
Taluk Office,
Aundipatti Post,
Theni District.



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G.R.SWAMINATHAN, J.

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3.The Executive Officer,
Town Panchayat Office,
Aundipatti Post,
Theni District.

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