



W.P(MD)No.15186 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 09.07.2024

CORAM:

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN**

**W.P(MD)No.15186 of 2024
and
W.M.P(MD)No.13291 of 2024**

Sivakumar

... Petitioner

vs.

- 1.The District Collector,
District Monitoring Committee,
Karur District.
- 2.The Assistant Engineer,
Assistant Divisional Engineer Office,
Highways Department,
Krishnarayapuram,
Karur District.
- 3.The Assistant Divisional Engineer,
Assistant Divisional Engineer Office,
Highways Department,
Krishnarayapuram,
Karur District.
- 4.The Divisional Engineer,
Divisional Engineer Office,
Highways Department,
Karur District.

... Respondents



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PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, to forbear the respondents herein from dispossessing the petitioner and his family from their only house situate in SF.No.495 situate at Omanthur Village, Mahathanam South, Krishnarayapuram Circle & Karur District by considering the petitioner's representation on 03.07.2024 to the respondents.

For Petitioner : Mr.R.Ramaguru

For Respondents : Mr.N.Satheesh Kumar
Additional Government Pleader

ORDER

(Order of the Court was made by R.SURESH KUMAR, J.)

The prayer sought for herein is for a Writ of Mandamus, to forbear the respondents herein from dispossessing the petitioner and his family from their only house situated in SF.No.495 situate at Omanthur Village, Mahathanam South, Krishnarayapuram Circle & Karur District, by considering the petitioner's representation on 03.07.2024 to the respondents.

2. Survey No.495 at Omanthur Village, Mahathanam South, Krishnarayapuram Taluk, Karur District, is admittedly a Highway land, wherein the petitioner has put up a dwelling house and has been residing



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there. Therefore, the Highways Department had already taken steps to remove such encroachment, at that time, the writ petitioner had approached this Court by filing a Writ Petition in W.P(MD)No.18879 of 2023. A Division Bench of this Court passing orders on 03.08.2023, has given the following direction:

'6. Be that as it may, since encroachment is alleged only in Survey No.495, which is a part of State Highways, the petitioner has no grievance for removal of encroachment in the said survey number.

7. At this juncture, learned counsel for the petitioner states that the petitioner alone is victimized and even though there are several encroachments in the same survey number, the first respondent is targeting the petitioner alone.

8. This Court finds that the above submission of the learned counsel for the petitioner is quite contrary to what he has stated in the affidavit.

9. Hence, this writ petition is dismissed with a direction to the first respondent to ensure that the removal of encroachment is confined only in Survey No.495. No costs. Consequently, connected miscellaneous petition is closed.'



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3. Pursuant to the said direction given by the Court, the respondents were taking steps to remove such encroachment and on 05.07.2024, when an attempt was made by the respondents to remove such encroachment, immediately, the petitioner had rushed to this Court and the learned counsel appearing for the petitioner made a mention that all of a sudden, without notice, the respondents had come with JCB to demolish the dwelling house of the petitioner. Therefore, we had orally directed the learned Additional Government Pleader, who took notice for the respondents, to wait till Tuesday ie., today (09.07.2024) to take up the Writ Petition. Accordingly, the present Writ Petition, having been processed and numbered, is listed today for hearing.

4. Heard Mr.R.Ramaguru, learned counsel appearing for the petitioner, who would submit that, the petitioner is a landless poor, is a huge family and this house had been constructed long back and they had been residing for very many years. When that being so, if all of a sudden, the only dwelling house of the petitioner's family is demolished, they would be virtually in the streets. Therefore, an alternative arrangement can be considered, for which, the petitioner is ready and willing to make a request to the first respondent/the District Collector for allotment of three cents of land under the landless poor category for the purpose of construction of a



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dwelling house. Till such an arrangement is made, breathing time may be given to the petitioner and his family to reside in the same residential house built up in the Highways land and therefore, atleast such an indulgence can be shown by this Court, he contended.

5.However, Mr.N.Satheesh Kumar, learned Additional Government Pleader, appearing for the respondents, on instructions, would submit that it is not as alleged by the petitioner, the respondents have suddenly taken any action against the petitioner, the action was initiated in the year 2022 itself and several times, notices had been issued and in earlier occasion, when, after notice, steps were taken to remove such encroachment, the petitioner had approached this Court and filed the said Writ Petition, where orders were passed on 03.08.2023, where, the Division Bench, in fact, had directed to remove such encroachment in respect of Survey No.495. Therefore, the issue has been given a complete conclusion by the said order of the Division Bench in W.P(MD)No.18879 of 2023, dated 03.08.2023.

6.Even thereafter, several months have gone, till such time the petitioner has not removed his encroachment on his own, therefore, it has become necessitated for the respondents to take coercive steps and when



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such an attempt was made during last week ie., on 05.07.2024, he has moved this writ Petition, therefore, till today, the respondents are refrained themselves from taking any coercive steps, as directed orally by this Court.

7.We have considered the said submissions made by the learned counsel appearing for both sides and we have perused the materials placed before this Court.

8.Admittedly, the land in which the dwelling house was constructed by the petitioner is a Highways Department land ie., the respondent Department. It is also not the first time, the respondents have come forward to take such coercive steps to remove such encroachment, as they have been moving from the year 2022, where several notices already had been issued to the petitioner and earlier attempts taken in this regard by the respondents had also been opposed by the petitioner by approaching this Court by filing the Writ Petition in W.P(MD)No.18879 of 2023 and orders were passed by the earlier Division Bench on 03.08.2023, where direction had been given to the respondents to take steps to remove the encroachment in Survey No.495. The relevant portion of the order of the Division Bench also has been extracted herein above.



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9. When that being the position, at present, once again the petitioner cannot set up any new case, as if the respondents have suddenly come forward to remove such encroachment of the petitioner.

10. Though it is the claim of the petitioner that he is landless poor and except this dwelling house, no other property is available for him to construct a house even suddenly, for which also, they should approach only the respondents to get minimum land of three cents for construction of dwelling house under the scheme being envisaged by the Government.

11. Even for such a gesture, the petitioner so far has not approached the first respondent/the District Collector, however, a draft application or representation, dated 07.07.2024 prepared by the petitioner has been produced before this Court by the learned counsel appearing for the petitioner that shows that so far no such application also has been even made to the first respondent/the District Collector.

12. In that circumstances, having regard to the aforesaid facts, we are inclined to dispose of this Writ Petition with the following orders:



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'(i) That it is open to the petitioner to make an application to the first respondent/the District Collector seeking allotment of three cents of land for the purpose of construction of a dwelling house.

(ii) If any such application is made, the same shall be annexed along with the copy of this order by the petitioner and on receipt of the same, the first respondent/the District Collector is hereby directed to consider the same taking into account the penurious nature with regard to the land for the purpose of having a dwelling house of the petitioner's family and accordingly, take a lenient view for allotting three cents of land for the purpose of construction of dwelling house for the petitioner's family, of course, in accordance with law.'

13.The learned counsel appearing for the petitioner seeks atleast two weeks time to remove the belongings, which is located in the dwelling house, which is sought to be removed by the respondents. Two weeks time till 27.07.2024 is granted, within which, the petitioner shall ensure that all his belongings are vacated from the dwelling house and the building materials used by the petitioner for construction of such dwelling



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house also on demolition can be removed by the petitioner which cannot be objected by the respondents. After two weeks time, ie., on 28.07.2024, it is open to the respondents to take all coercive steps to remove such encroachment by demolishing the structure, where if any worthy building materials are still available, that can also be permitted to be collected by the petitioner and the vacant possession shall be handed over by the petitioner. It is made clear that no further extension of time shall be granted to the petitioner.

14. With these directions, this Writ Petition is disposed of. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

[R.S.K.,J.] [G.A.M.,J.]
09.07.2024

NCC : Yes / No
Index : Yes / No

Note: Issue Order Copy on 10.07.2024.

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To

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Karur District.
- 2.The Assistant Engineer,
Assistant Divisional Engineer Office,
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R.SURESH KUMAR,J.
and
G.ARUL MURUGAN,J.

ps

ORDER MADE IN
W.P(MD)No.15186 of 2024

DATED : 09.07.2024