



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

and

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) No.5623 of 2017

R.Gunasekar

... Petitioner

Vs.

1. The District Collector,
Tiruchirappalli.
2. The Commissioner,
Tiruchirappalli City Municipal Corporation,
Tiruchirappalli.
3. The Tahsildar,
Tiruchirappalli (East),
Tiruchirappalli.
4. St.Joseph's College,
Rep.by its Procurator,
Tiruchirappalli.
5. M/s.Theatre Maris (P) Ltd,
Rep.by its Managing Director,
Office at Maris Garden,
No.1, Lawsons Road,
Tiruchirappalli - 620 001.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, to direct the second respondent to remove the encroachments made by the fourth and fifth respondents in the subject matter of the property situate in Fort Station Road, Sriengam Zone, Tiruchirappalli City Corporation in Old Ward "A" New Ward "F" Block No.25, Old Survey Nos.8/2, New Survey Nos.8/2A and 8/2B.

For Petitioner
For Respondents

: Mr.G.S.Asok Adithyan
: Mr.Govindan,
Spl., Govt.Pleader for R1 & R3
Mr.N.S.Karthikeyan for R2
Mrs.N.Krishnaveni S.C for
Mr.S.Vinod Sathya Lazar for R4
Mr.S.Ramesh for Mr.V.Raghavachari
for R5

**ORDER**

[Order of the Court was made by **G.R.SWAMINATHAN, J.**]

The writ petitioner claims to have filed this petition in public interest.

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2. According to the petitioner, the land in Town Survey No.9/1, Old Ward "A" New Ward "F", Block No.25, Old Survey No.8/2, New Survey Nos.8/2A and 8/2B, was acquired for laying pipe line for the Tiruchirappalli City Municipal Corporation. According to the petitioner, the fourth respondent is an encroacher. The fifth respondent purchased a portion of the land from the fourth respondent. The petitioner, therefore, seeks a direction to the Trichirappalli City Municipal Corporation and the Tahsildar, Trichirappalli to evict the respondents 4 and 5 from the said property and take action against the encroachers.

3. This Court by order dated 17.08.2017 directed the authorities to cause survey of the property in question by deputing the jurisdictional Tahsildar along with Taluk Surveyor. The Tahsildar was to prepare a sketch of the property and report, indicating as to whether there is any act of encroachment committed by the fourth and fifth respondents. Liberty was given to the writ petitioner as well as the contesting respondents to produce materials before the Tahsildar while measuring the property. It was further directed by this Court that the report should clearly indicate as to whether there is any act of encroachment and if so, the extent of encroachment and the names of the encroacher. The District Collector, Trichirappalli filed a status report pursuant to the aforesaid direction. The report of the Tahsildar has also been enclosed. The District Collector, Trichirappalli in his status report has stated as follows :

"It is very clear that the lands measuring (denoted in green colour) 1969 sq.ft/183 sq.mt is under encroachment by 4th respondent, details of which is tabulated as below:-

T.S. No.	Patta/Town Survey Records in the name of (Tvl)	Total extent (in Sq.Mt)	Extent acquired by Thiruchirappalli City Corporation (in Sq.Mt.)	Extent under Encroachment (in sq.mt)
8/2A	Present Procurator, St. Josephs College	0.2400.0	0.0183.0	0.0183.0
8/2B	Ramasamy S/o. Mariyappillai, Managing Director The Centre MARIS Private Limited.	0.0145.0	0.0011.0	Nil



It is submitted that after the perusal of the above Report of the Tahsildar, Trichirappalli (East) together with all connected materials in this subject matter, I am in full agreement with the findings of the Tahsildar, Trichirappalli (East). Hence, I am of the opinion that the fourth respondent herein has encroached upon a portion of the land admeasuring an extent of 183 Sq.mt., in which the pipeline goes below and the fourth respondent has constructed a Compound Wall on the southern side of T.S.No.8/2A, thereby obstructing entry to Northern side from the Southern side. The above said encroachment has been marked in the Map and the same is submitted in the typeset. The encroachment thus made by the fourth respondent is a part and parcel of the land belonging to the Tiruchirappalli City corporation. In this connection it is also stated that except the above extent, the remaining extents covered under T.S No.8/2A, does not belong to Tiruchirappalli city corporation and there is no encroachment on the remaining extent.

It is submitted that in as far as the subject property in T.S No.8/2B, admeasuring an extent of 11 sq.mtr, it is stated that this extent is actually a pathway and the fifth respondent has allowed the same as a pathway itself. Hence it is submitted that there is no encroachment by the fifth respondent in this subject matter in respect of the T.S No.8/2B."

4.Though the report of the revenue authorities partially confirms the allegation made by the writ petitioner, the learned counsel appearing for the writ petitioner would submit that the actual extent of encroachment committed by the fourth and fifth respondents is not truly reflected in the reports of the authorities. Since this Court acting under Article 226 of the Constitution of India cannot convert itself into a trial court by going into the disputed questions of fact, even while directing the authorities to take action as per law for removal of the encroachments set out in the status report, we give liberty to the writ petitioner to move the civil court for appropriate relief if he is still aggrieved.

5.This Writ Petition is disposed of accordingly. No costs.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar(CS-II)



To

1. The District Collector,
Tiruchirappalli.
2. The Commissioner,
Tiruchirappalli City Municipal Corporation,
Tiruchirappalli.
3. The Tahsildar,
Tiruchirappalli (East),
Tiruchirappalli.

Skm

MK/ES/RSK/SAR 2/26.12.2018/4P/4C

W.P. (MD) No. 5623 of 2017
dated: 11.09.2017