



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.07.2018

CORAM:

**THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
and
THE HONOURABLE MR.JUSTICE M.DURAISWAMY**

**W.P(MD)No.16119 of 2018
and
W.M.P(MD)Nos.14370 & 14371 of 2018**

S.Anjuran

... Petitioner

Vs.

1. The District Collector,
Madurai District,
Madurai.
2. The Block Development Officer,
Melur,
Madurai District.
3. The Tahsildar
Melur Taluk,
Madurai District.
4. The Executive Officer,
O/o. Executive Officer,
Thiruvadhur Panchayat.
Melur Taluk,
Madurai District.
5. V.Pandi
6. P.Pechiammal

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Na.Ka.No.10123/2017/AA4 dated 23.04.2018 on the file of the third respondent and quash the same as illegal and consequently, direct the respondents 1 to 3 remove the illegal encroachment made by the respondents 5 and 6 on the public pathway situated in Survey No.606/21 at Thiruvathavur, Melur Taluk, Madurai District.



For Petitioner : Mr.T.Lajapathi Roy

For RR 1 to 3 : Mr.S.Angappan,
Government Advocate.

For R4 : Mr.K.Mu.Muthu,
Additional Government Pleader.

ORDER

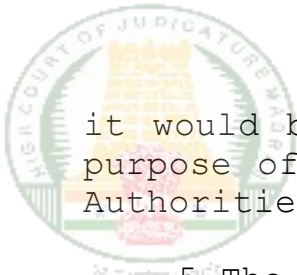
(Order of the Court was made by **HULUVADI G.RAMESH, J.**)

Heard the learned counsel for the petitioner and Mr.S.Angappan, learned Additional Government Pleader, who takes notice for the respondents 1 to 3 and Mr.K.Mu.Muthu, learned Additional Government Pleader, who takes notice for the fourth respondent.

2. The petitioner has come up with this Writ Petition seeking a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Na.Ka.No.10123/2017/AA4 dated 23.04.2018 on the file of the respondent No.3 and quash the same as illegal and consequently, direct the respondent Nos.1 to 3 remove the illegal encroachment made by the respondent Nos.5 and 6 on the public pathway situated in Survey No.606/21 at Thiruvathavur, Melur Taluk, Madurai District.

3.It appears that originally the petitioner has filed a Writ Petition in W.P(MD)No.3735 of 2012, directing the respondents 1 to 3 therein to remove the alleged encroachment made by the respondents 4 and 5 therein and the Division Bench of this Court has directed the Tahsildar, to issue notice to the fourth and fifth respondents and thereafter, decide the representation submitted by the petitioner on merits and as per law. However, the said order came to be passed by suppressing the fact that a suit was filed by him in respect of the very same subject matter. The petitioner has filed the present Writ Petition, since he suffered an order of dismissal in the civil suit. However, making the respondents/authorities as a party and the same defence should be taken as encroachers only after issuance of notice to the other side and on merits.

4.As a matter of fact, it is not sustainable that, to make a further change in the order or to get a favourable order and it is for the petitioner to file an appeal instead of filing the present Writ Petition. Since it appears that during the pendency of dispute, there is a finding already given by the civil Court, dismissing the suit on merits and transforming a private remedy into a public remedy, is not known to law. If so, the petitioner in this writ petition would approach the Appellate Court, so that



it would be appropriately considered and disposed of and for the purpose of executing, they can seek the assistance of the Revenue Authorities while executing the decree.

5. The Writ Petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (Cs-I)

/True Copy/

Sub Assistant Registrar (CS-I)

To

1. The District Collector,
Madurai District,
Madurai.
2. The Block Development Officer,
Melur,
Madurai District.
3. The Tahsildar
Melur Taluk,
Madurai District.
4. The Executive Officer,
O/o. Executive Officer,
Thiruvadhur Panchayat.
Melur Taluk,
Madurai District.

PS

VB/RP/SAR1/30.08.2018/3P/5C

W.P (MD) No.16119 of 2018
24.07.2018