



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 03.06.2019**

CORAM:

**THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU
and**

WEB COPY THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A. (MD) No.549 of 2019

and

C.M.P. (MD) No.4625 of 2019

Madurai Managar Maninagaram
Senaithalaivar Uravinmurai Sangam,
Rep. Through its President
V.Mariyappan

: Appellant/3rd respondent

Vs.

1.B.Ilavazhagan

2.Venkatachalam

3.Murugan

4.Raju

5.Thilagavathi

6.Elilarasi

7.Parthiban

8.Latha

9.Kasthuri

10.Nagarathinam

11.Muthulakshmi

12.Saroja

13.Amirthanandham

14.Murugesan

15.Vijayaragavan

16.Subramaniyan

<https://hcservices.ecourts.gov.in/hcservices/>

17.Marimuthu



18.Selvi

19.Varatharajan @ Pandi

20.Karuppasamy

21.Gopal

22.Kasthuri

23.Ayyanoo Pillai

24.Ravi

25.Ganeshan

26.Kasthuri

27.Mageswari

28.Gokila

29.Tamilarasi

30.Subramanian

31.Selvarajan

32.Punitha

33.Soundararajan

34.Poovalingam

35.Shanmugarajan

36.Ramya

37.Vasuki

38.Angayar Kanni

39.Manimala

40.Jeyasudha

41.Baskar

42.Jamuna

43.Murugan



44.Dharani

45.Thangamuthu

: Respondents 1 to 45/Petitioners

46.The Commissioner,
Madurai Corporation, Madurai - 2.

47.The Assistant Commissioner,
4th Zone, Madurai Corporation,
Madurai.

: Respondents 46 & 47/
Respondents 1 & 2

PRAYER: Writ Appeals are filed under Clause 15 of Letters Patent Act, against the order dated 25.03.2019 passed in W.P.(MD)No.5907 of 2019.

Prayer in WP(MD)No. 5907/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Mandamus, to direct the respondents No.1 & 2 to provide water service connection to the petitioners respective houses by considering their representations dated 25.09.2018 and 22.11.2018 and consequentially forbear the 3rd respondent or his men in any way preventing the petitioners from using the public roads form part of Senaiyar Colony at Raja Mill Road, Madurai City.

For Appellant : Mr.R.Suriyanarayanan

For R-1 to R-45 : Mr.M.Ajmal Khan
Senior Counsel
for Mr.R.Gandhi

For R-46 & R-47 : Mr.N.Shanmugaselvam

JUDGMENT

[Order of the Court was made by **K.RAVICHANDRABAABU, J.**]

This Writ Appeal is directed against the order made in the Writ Petition in W.P.(MD)No.5907 of 2019 dated 25.03.2019.

2.The appellant before us is the third respondent before the Writ Court. The Writ Petition was filed seeking for Mandamus directing respondents / Madurai Corporation to provide water service connection to the writ petitioners by considering their representation, dated 25.09.2018 and 22.11.2018 and consequently forbear the third respondent/appellant herein in any way preventing the petitioners from using the public roads form part of Senaiyar Colony at Raja Mill Road, Madurai City.



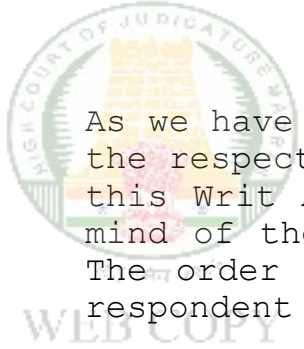
3. Heard the learned counsel appearing for the appellant; the learned counsel appearing for the respondent Corporation and Mr.M.Ajmal Khan, learned Senior Counsel appearing for the private respondents/writ petitioners.

4. It is seen that the appellant, who was arrayed as third respondent before Writ Court, has not chosen to appear, despite receipt of notice from the Writ Court. However, the order passed by the Writ Court is sought to be challenged by the appellant by raising very many contentions on the merits of the matter. Perusal of the grounds raised in support of this writ appeal as well as the affidavit filed in support of the stay application, do not indicate anywhere as to why the appellant has not chosen to appear before the Writ Court, even though notice was served on them. Therefore, we are not inclined to interfere with the order passed by the Writ Court as the appellant has not convinced us as to why they have not chosen to appear before the Writ Court, despite receipt of notice. Needless to say that once a notice is served, it is for the contesting respondents to appear before the Writ Court and place all the facts and circumstances so as to enable the Writ Court to arrive at a just and proper conclusion.

5. The learned counsel appearing for the appellant however submitted that there is a civil dispute pending between the parties in O.S.No.537 of 2018 on the file of the Principal District Munsif Court, Madurai in respect of the property in which the water pipe line connections are said to be given and thus submitted that the Writ Court ought not to have granted such relief. It is the contention of the appellant that the property, in which water pipe line connections are sought to be given is a private property.

6. On the other hand, it is contended by the learned Senior Counsel appearing for the writ petitioners that the said property is not private property as the sale deed obtained by them from the promoter/appellant, would clearly show that the subject matter property is a common pathway entitling the purchasers of each plot to put it for common use. Therefore, the learned Senior Counsel submitted that the contention of the appellant that it is a private property is unsustainable.

7. We are not inclined to express any view on the rival contentions of the parties in respect of the nature of the subject matter property, since, admittedly, a Civil Suit before the Civil Court as stated supra is pending touching upon the question with regard to the very status of the subject matter property. However, as the petitioners are seeking only water service connection through the subject matter land and when the Writ Court has issued such a direction especially when the appellant herein has not chosen to appear before the Writ Court and oppose the Writ Petition, we are of the view that compliance of the order passed by the Writ Court should be subject to the result of the suit pending in O.S.No.537 of 2018, on the file of the learned Principal District Munsif, Madurai.



As we have not expressed any view on the merits of the claim made by the respective parties and the status of the land, the order made in this Writ Appeal as well as the Writ Court shall not influence the mind of the Civil Court while deciding the Suit on its own merits. The order passed by the Writ Court shall be complied with by the respondent Corporation as expeditiously as possible.

8. With the above observations, this Writ Appeal is dismissed. No costs. Consequently, connected Miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (AS)

/ True Copy /

Sub Assistant Registrar (CS-)

Rj2

To

1. The Commissioner,
Madurai Corporation, Madurai - 2.

2. The Assistant Commissioner,
4th Zone, Madurai Corporation,
Madurai.

+1 CC to M/s. R. SURIYANARAYANAN, Advocate
(SR-66705[F] dated 03/06/2019)

Order made in
W.A. (MD) No. 549 of 2019
Dated: **03.06.2019**

ES/18.06.2019/5P/4C