



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 17.10.2019
CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

W.P.(MD) No.21936 of 2019

and

W.M.P.(MD) Nos.18695 & 18696 of 2019

Nirmala

... Petitioner

-vs-

1. The Executive Officer
Illupur Town Panchayat
Pudukkottai District

2. The Assistant Engineer
Tamilnadu Electricity Board
Illupur
Pudukkottai District

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari to call for the records of the 1st respondent in Na.Ka.No.303/2017, dated 30.09.2019 and quash the same as illegal and arbitrary.

For Petitioner : Mr.P.Ganapathi Subramanian

For Respondents : Mr.A.Thiyagarajan
Government Advocate for R1

O R D E R

[Order of the Court was made by T.S.SIVAGNANAM, J.]

This writ petition has been filed challenging the order dated 30.09.2019, which has been passed by the first respondent in utter disregard to the orders and directions issued by this Court in W.P.(MD) No.19855 of 2019, dated 17.09.2019.

2. The above writ petition was filed by the present writ petitioner challenging the proceedings of the first respondent, dated 05.09.2019. The said writ petition was disposed of by issuing the following order:

"Heard Mr..Ganapathi Subramanian, learned counsel for the petitioner, Mr.A.Muthukaruppan, learned Additional Government Pleader for the



first and seconds respondent and Mr.N.Shanmuga Selvam, learned Standing Counsel for the third respondent. By consent of both parties, this writ petition is taken up for final disposal.

2. This writ petition has been filed challenging the notice issued by the third respondent, dated 05.09.2019 calling upon the petitioner to vacate the encroachment stated to have been caused by him in a 20 feet wide road.

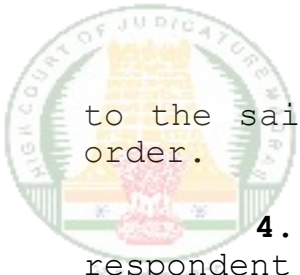
3. Even as per the impugned notice, it is stated that the 20 feet road has not been handed over to the third respondent Panchayat. The impugned notice is in consequence of a direction issued by this Court in W.P.(MD)No.5121 of 2019 dated 26.04.2019, to which one of us (Hon'ble MRS.JUSTICE R.THARANI) was a party. The said writ petition was filed by the fourth respondent herein stating that the petitioner has encroached.

4. It is pointed out by the learned counsel for the petitioner that in the affidavit filed in support of W.P.(MD)No.5121 of 2019 in paragraph No.3, it is stated that there is a public pathway to an extent of 12 feet width towards east-west. The impugned notice states that the pathway is 20 feet and they term it as a road. Since the petitioner, who is the fourth respondent in the earlier writ petition filed by M.Joseph @ Jegadhgeesan was not issued notice in that writ petition, because the Court deems not to issue any positive direction. It goes without saying that the petitioner should have an opportunity to place all facts before the third respondent.

5. Accordingly, the petitioner is directed to treat the impugned notice as show cause notice and submit her objections along with all documents in respect of her claim within a period of two weeks from the date of receipt of a copy of this order. On receipt of such reply, an inspection shall be conducted by the third respondent in the presence of the petitioner and the fourth respondent, thereafter proceed to pass a speaking order on merits and in accordance with law.

6. With the above direction, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed."

3. Though the first respondent was a party to the said order and appeared through the learned Standing Counsel, in utter defiance
<https://hcservices.ecourts.gov.in/hcservices/>



to the said orders and directions, has passed the present impugned order.

4. The learned Government Advocate appearing for the first respondent is unable to defend the impugned order, rather would accept that the impugned order in this writ petition is contrary to the directions issued by this Court vide order dated 17.09.2019 in W.P.(MD) No.19855 of 2019.

5. Thus, for the above reasons, the writ petition is allowed and the impugned order, dated 30.09.2019, passed by the first respondent, is quashed. The respondent / Town Panchayat is directed to comply with the directions issued in the order, dated 17.09.2019, in W.P.(MD) No.19855 of 2019. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Executive Officer
Illupur Town Panchayat
Pudukkottai District
2. The Assistant Engineer
Tamilnadu Electricity Board
Illupur
Pudukkottai District

+1 CC to Mr.P.GANAPATHI SUBRAMANIAN, Advocate (SR-93067[F] dated 18/10/2019)

W.P. (MD) No.21936 of 2019

and

W.M.P. (MD) Nos.18695 & 18696 of 2019

17.10.2019

krk

MK (25.10.2019) 3P 4C