



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.03.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. (MD) No. 1813 of 2011

K.Kamalaveni

... Petitioner

Vs.

- 1.The Commissioner,
Thiruchirappalli Corporation,
Thiruchirappalli.
- 2.The Assistant Commissioner,
Ariyamangalam Zone,
Corporation of Thiruchirappalli,
Palakkarai Main Road,
Thiruchirappalli.

... Respondents

Petition filed under Article 226 of the Constitution of India, for issue of Writ of Mandamus, directing the respondents to restore the compound wall of the Petitioner's house bearing Door No.43-B/1, Sangiliandapuram, Trichy to its original position and pay damages of Rs.3,00,000/- for the illegal demolition.

For Petitioner	:	Mr. R. Subramanian
For 1 st Respondent	:	Mr. J. Parekh Kumar for Mr.P.Srinivas
For 2 nd Respondent	:	Mr. M. Murugan Government Advocate.

O R D E R

Heard Mr. R. Subramanian, Learned Counsel for the Petitioner, Mr. J. Parekh Kumar, Learned Counsel for the First Respondent and Mr. M. Murugan, Learned Government Advocate for the Second Respondent.

2. The Petitioner seeks for direction to the Respondents to restore the compound wall of the Petitioner's house bearing Door No.43-B/1, Sangiliandapuram, Trichy to its original position and pay damages for illegal demolition.



3. In the order dated 17.02.2014 in this Writ Petition, an Advocate Commissioner was appointed to inspect the property and note down the physical features of the disputed portions and its measurements as per layout plan. The Learned Advocate Commissioner in his report dated 09.12.2015, filed in pursuance thereto, has stated that after measuring the property as per the layout plan, it is seen there is encroachment by the Petitioner to the extent of 0.9 meter and 1.1 meter on either side of his house. Photographs and video recordings have also been produced in support thereof. In as much as the Petitioner has encroached upon the land of the Respondents, there is absolutely no question of directing the Respondents to restore the compound wall or pay damages as sought by the Petitioner in the Writ Petition.

4. The Hon'ble Supreme Court of India in **Roshna T vs. Abdul Azeez K.T.** [(2019) 2 SCC 329] has reiterated the settled position of law that the disputed question of fact relating to property rights, which are private in character and do not have any element of public law involved, require leading of evidence of parties and cannot be decided in summary proceedings under Article 226 of the Constitution of India.

5. Accordingly, the Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar(AD-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

ta/sj

To

- 1.The Commissioner,
Thiruchirappalli Corporation,
Thiruchirappalli.
- 2.The Assistant Commissioner,
Ariyamangalam Zone,
Corporation of Thiruchirappalli,
Palakkarai Main Road,
Thiruchirappalli.



WEB COPY

+1 CC to M/s.P.SRINIVAS, Advocate (SR-12148[F] dated 17/03/2020)

+1 CC to M/s.R.SUBRAMANIAN, Advocate (SR-12372[F] dated 18/03/2020)

W.P. (MD) No. 1813 of 2011
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DB (CO)
TR (26.05.2020) 3P 5C