



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.12.2021

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THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P(MD)No.18888 of 2021

and

W.M.P(MD) .No.15715 of 2021

WEB COPY

S.Periyakaruppan

... Petitioner

Vs.

1.The District Collector,
Madurai District,
Madurai.

2.The Commissioner,
Madurai Corporation,
Madurai.

3.The Tahsildar,
Madurai North,
Madurai District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, forbearing the respondents or his men or agents or through any other person in any way disturbing the peaceful enjoyment and possession of petitioner's house property situated in Masthanpatti, Andarkottaram Post, Madurai District and consequently direct the first respondent to issue patta on the basis of his application submitted to him.

For Petitioner	:	No appearance
For R-1 and R-3	:	Mr.N.Satheesh Kumar, Additional Government Pleader.
For R-2	:	Mr.Nihil Nandha for Mr.B.Saravanan, Standing Counsel.

ORDER

The Writ Petition was listed on 06.12.2021. There was no representation on behalf of the petitioner and it had been adjourned today. Again, there is no representation on behalf of the petitioner.

2. I do not think it will be justifiable on my part to hold the Writ Petition still on the board of this Court particularly in view of the information given by Mr.N.Satheesh Kumar, learned Additional Government Pleader, who represents respondents 1 and 3. Heard also Mr.Nihil Nandha appearing for Mr.B.Saravanan, learned Standing Counsel for the second respondent / Madurai Corporation.

3. The Writ Petition has been quite innocuously filed in
<https://hcservices.ecourts.gov.in/hcservices/>



the nature of Mandamus forbearing the respondents from disturbing the peaceful enjoyment and possession of the petitioner's property in Masthanpatti, Andarkottaram Post, Madurai District.

4. Primarily, this Court sitting in Writ jurisdiction can never give a direction or restraint order as against anybody in the nature of an injunction protecting possession, since, it is obligatory on the part of the petitioner to establish possession. That is an aspect which revolves around evidence and this Court can never take averments made in the affidavit filed in support of the Writ Petition for granted to hold that the petitioner is actually in possession.

5. Even otherwise, quite shockingly, it is stated that the portion where the petitioner resides is actually a portion of Masthanpatti Kanmai and a notice, under Rule 5 Sub-Rule(3) under Form II of the Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, 2007, had been issued to the petitioner herein and he had also been served with a copy on 25.10.2021. A copy of the notice containing the signature of the petitioner had been forwarded to this Court. The signature as seen in the affidavit is quite unique and there is no doubt that it cannot be duplicated by any person.

6. Naturally, it is evident that the notice had been served. In that particular notice, it had been very clearly stated that the petitioner had encroached into the tank area which is actually a Kanmai or a water body. It had also been stated that if he continues with encroachment, then penal action will follow as against the petitioner.

7. Thereafter, a further notice had been issued to the petitioner under Rule 6 Sub-Rule(1) of the very same Act to remove the encroachment. Naturally, when these steps have been taken by the revenue authorities, this Court can never pass any order protecting possession. The Writ Petition is wholly misconceived. This Writ Petition is dismissed. The respondents and even the Public Works Department are given liberty to proceed further in manner known to law.

8. Accordingly, this Writ Petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

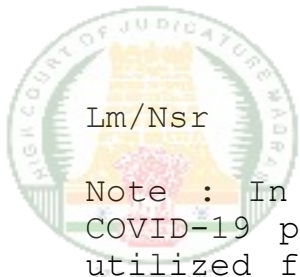
Sd/-

Assistant Registrar (AD-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



Lm/Nsr

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The District Collector,
Madurai District,
Madurai.
- 2.The Commissioner,
Madurai Corporation,
Madurai.
- 3.The Tahsildar,
Madurai North,
Madurai District.

+1 CC to M/s.SPL GP (SR-38365[F] dated
13/12/2021)

W.P (MD) No.18888 of 2021
10.12.2021

SRK(CO)
KB(22.12.2021) 3P 5C