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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2022

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

W.P.NO.2855 OF 2022

V.Madhuraj ... Petitioner

.Vs.

1. The Commissioner,
   Mettur Municipality,
   Mettur Dam - 636 401,
   Salem District.

2. R.Badmanaban

3. R.Balu ... Respondents

PRAYER:- Petition filed under Article 226 of the Constitution of India to issue a writ of Mandamus, directing the 1st respondent to remove the encroachments and construction put up by the respondents 2 and 3 in the pathway accessing to the west main road in Old Block No.38, T.S.No.10, now known as Ward No.B, Block No.11, MTC area Mettur under T.S.No.10 based on the petitioner representation dated 07.11.2019.

For Petitioner : Mr.S.P.Yuvaraj

For 1st Respondent : Mr.L.P.Mourya

ORDER

[Order of this Court was delivered by T.RAJA, J.]

This Writ Petition has been filed seeking to issue a Writ of Mandamus, directing the 1st respondent to remove the encroachments and constructions put up by the respondents 2 and 3 in the pathway which is an access to the West Main Road in Old Block No.38, T.S.No.10, now known as Ward No.B, Block No.11, MTC

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area Mettur under T.S.No.10 based on the petitioner representation dated 07.11.2019.

2. Learned Counsel appearing for the petitioner would submit that the petitioner is the owner of the land situated at Old Block No.38, T.S.No.10, now known as Ward No.B, Block No.11, MTC area Mettur and he purchased the said property in public auction held by the Official Liquidator of the High Court of Madras and to that effect, a sale deed was also executed in his favour on 07.06.2012. Since the respondents 2 and 3 have encroached the public path by putting up constructions and storing waste materials, a representation dated 07.11.2019 was given to the 1st respondent to remove the encroachment and constructions which were put up across the public pathway. This is only an access to the West Main Road. Till now, no action is forthcoming. Hence the petitioner is before this Court with this writ Petition.

3. Learned Counsel appearing for the 1st respondent, namely, the Commissioner, Mettur Municipality, Mettur Dam, would submit that the petitioner has wrongly mentioned the Town Survey Number as 10 instead of T.S.No.1 and he sold away the said land in T.S.No.1 to third parties. Therefore, he has no any land or house as on to-day in his name in the said Survey Number.

4. In reply, learned Counsel for the petitioner would submit that the petitioner has purchased the property-in-question in public auction, again in the same street in Ward No.B, Block No.11, MTC area Mettur in T.S.No.1. Therefore, the petitioner has got a right to come to this Court and due to the encroachments made by the respondents 2 and 3, he was put to face great hardship.

5. Again, learned Counsel for the 1st respondent would submit that the petitioner's subsequent purchaser having sold some of the lands, they have also filed a Civil Suit in O.S.No.122/2019 before the learned District Munsif, Mettur seeking the similar relief. However, the petitioner is not a party before the civil court. He would further submit that there is no order of injunction restraining the 1st respondent from proceeding with the removal of the encroachment.

6. Therefore, considering the facts and circumstances of the matter and the fact that when the petitioner is having a property in Ward No.B, Block No.11, MTC area Mettur in T.S.No.1 and in the same place, the respondents 2 and 3 have encroached the public pathway by putting up constructions and storing waste materials, he is entitled to ask for removal of the said encroachment. Hence, the 1st respondent herein, namely, the Commissioner, Mettur Municipality, Mettur Dam-636 401, Salem

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District, is directed to consider the representation of the petitioner dated 07.11.2019 and dispose of the same and if there is any encroachment found as alleged by the petitioner, the same shall be removed after giving notice to the respondents 2 and 3 as there is no injunction order restraining the 1st respondent from removing the encroachment in the pending civil suit. The above said exercise shall be done within a period of four weeks from the date of receipt of a copy of this Order.

7. With the above directions, the writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

The Commissioner,
Mettur Municipality,
Mettur Dam - 636 401,
Salem District.

+1cc to Mr.S.P.Yuvaraj, Advocate, S.R.No.15100
+1cc to Mr.L.P.Mourya, Advocate, S.R.No.15381

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