



W.P.No.28117 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2022

CORAM

**THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE
and**

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

**W.P.No.28117 of 2022
and W.M.P.No.27406 of 2022**

Kousalya

.. Petitioner

-VS-

1. The District Collector,
Tiruppur District, Tiruppur.
2. The Assistant Director,
Panchayats, Erode Zone,
Erode.
3. The Tahsildar,
Palladam, Tiruppur District.
4. The Executive Officer,
Samalapuram Town Panchayath,
Samalapuram Village, Palladam Taluk,
Tiruppur District 641 668.
5. The Taluk Surveyor,
Office of the Tahsildar,
Palladam, Tiruppur District.

..Respondents

Petition filed under Article 226 of the Constitution of India
praying for issue of Writ of Certiorari to call for the records pertaining



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to the impugned order dated 30.09.2022 passed by the 4th respondent in Na.Ka.No.23/2022 and quash the same.

For Petitioner : Mr.D.R.Arunkumar

For Respondents : Mr.P.Muthukumar
State Govt. Pleader

* * * * *

ORDER

(Order of the Court was made by The Hon'ble Acting Chief Justice)

Kousalya, W/o.Shanmugasundaram, has filed this writ petition challenging the impugned order dated 30.09.2022 issued by the Executive Officer, Samalapuram Town Panchayat, Tiruppur District, the fourth respondent herein and to quash the same as unjustified.

2. The learned counsel appearing for the petitioner contended that the petitioner and her husband are the joint owners of the patta lands, viz., residential buildings, cotton godown, etc., comprised in S.F.Nos.882/1, 2A and 3 of Samalapuram Village, Palladam Taluk, approved in Plan Approval Nos.148/2010-11 dated 08.03.2011 and 82/2013 dated 19.12.2012 by the fourth respondent. The petitioner



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and her husband are in exclusive possession and enjoyment of the said properties and they get access to their lands through an adjoining thar road comprised in S.F.Nos.883 and 884, which was originally cart tracks that are connecting Trichy-Coimbatore national highway and Avinasi-Coimbatore national highway apart from connection many other villages

3. While so, the fourth respondent had fenced a portion of the road junction in S.F.No.883, 884 adjoining the petitioner's lands obstructing the free access to the petitioner's properties. The said act of the fourth respondent is violative of the fundamental rights of the petitioner because they are unable to move freely. Therefore, a representation has been presented to remove the obstruction in the road junction on 15.10.2020 by registered post.

4. It is submitted that the second respondent had advised the third respondent to take appropriate action on the representation and report to him vide ROC.No.232/2020 dated 05.09.2020, pursuant to which the third respondent passed an order on 24.09.2020 vide ROC.No.159/2020, but did not remove the obstruction under the guise



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of construction of overhead tank. Again, the second respondent is stated to have advised the third respondent for taking appropriate action vide ROC.No.232/2020 dated 19.10.2020, but went in vein. Assailing the said action of the respondents, the petitioner has filed W.P.No.4078 of 2021 before this Court, in which an interim injunction was granted against the fourth respondent in W.M.P.No.4694 of 2021 vide order dated 19.02.2021.

5. It is submitted that in order to satisfy the whims and fancies of the local political big wigs, the fourth respondent went to the extent of putting the fence in the patta lands of the petitioner. It is stated that the petitioner has not encroached upon any inch of the land beyond the boundaries of her land and without giving any show cause notice or prior intimation and without proper survey of the land, the impugned order has been passed stating that the petitioner has encroached on the road portion in S.F.Nos.883 and 884.

6. The main contention of the learned counsel for the petitioner is that no prior notice or opportunity of giving explanation was afforded to the petitioner before issuing the impugned notice and



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proper survey has also not been conducted and therefore, the impugned notice is illegal and non est in the eye of law.

7. Mr.P.Muthukumar, learned State Government Pleader, taking notice on behalf of the respondents, would fairly submit that since there is an allegation that the petitioner has encroached upon the road junction in S.F.Nos.883 and 884 and since the petitioner alleges that no prior notice or intimation was given to the petitioner before putting up the fence, the respondents would conduct a proper survey of the land in question in the presence of the petitioner and if it is found that the petitioner has actually encroached upon, a fresh notice will be caused upon the petitioner for proceeding with further course of action.

8. In view of the above submission of the learned State Government Pleader, we direct the Tahsildar, Palladam, Tiruppur District, the third respondent herein, to conduct a survey of the land in question after putting the petitioner on notice and if ultimately it is found that the petitioner has encroached a portion of the road junction/cart track, further action shall be taken in the manner known



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to law. The writ petition is, accordingly, disposed of with the said direction. No costs. Consequently, W.M.P.No.27406 of 2022 is closed.

(T.R., ACJ.) (D.K.K, J.)

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Speaking/Non-speaking order

Index : Yes / No

Internet : Yes / No

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To

1. The District Collector,
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Erode.
3. The Tahsildar,
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4. The Executive Officer,
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T.Raja, ACJ.
and
D.Krishnakumar, J.

(sra)

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