



WEB COPY



W.P.No.31556 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2022

CORAM:

THE HON'BLE **MR.JUSTICE M.DHANDAPANI**

W.P.No.31556 of 2022

Sivappa

. . . Petitioner

Vs.

1. Government of Tamil Nadu,
Rep by its Secretary to Government,
Revenue Department,
Fort St.George, Chennai-600 005.

2. The Collector,
Collector Office,
Thenkanikootai,
Krishnagiri District.

3. The Revenue Inspector,
Rayakottai,
Krishnagiri District.

4. The Tahsildar,
Rayakottai,
Krishnagiri District.

. . . Respondent

PRAYER:Writ Petition filed under Article 226 of the Constitution of India,
to issue a Writ of Certiorarified Mandamus or any other order or orders of
direction in the nature of a writ calling for the records of the Respondents,



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especially the 4th Respondent made in Na.Ka.No.4662/2022/B1 dated 05.11.2022 issued to remove the encroachment in public pathway without ascertaining the fact that the survey no.837/1A, 837/1B and 844/3 is petitioner's own land and forgetting FMB dated 02.09.2022 and quash the same as null and void, illegal as invalid and consequently directing the Respondents to re-correct the subsequent FMB dated 27.09.2022.

For Petitioner : M/s.D.Padmanabhan

For Respondent : Mr.U.Baranidharan,
Additional Government Pleader.

ORDER

The present petition has been filed seeking to quash the impugned order dated 05.11.2022 which was passed by the 4th respondent to remove the encroachment in public pathway in the petitioner's properties and direct the Respondents to re-correct the subsequent FMB dated 27.09.2022.

2. Mr.U.Baranidharan, learned Additional Government Pleader takes notice for the respondents.



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3. It is the case of the petitioner that he had purchased the properties in Survey No.835/5 measuring an extent of about 0.14 cents & Survey No.837/4 measuring to an extent of about 1 Acre 30 cents. The petitioner made a representation to the 4th respondent requesting to measure the above said properties, pursuant to which, the petitioner's property was measured and FBM dated 02.09.2022 was issued. Thereafter, due to some disturbance caused to the petitioner's peaceful possession, third parties made a representation before the respondents seeking to survey the property, pursuant to which, FBM dated 27.09.2022 was issued, disclosing a public pathway in the petitioner's property, which was entirely different from the earlier FBM. Subsequently, the present impugned order dated 05.11.2022 came to be passed by the 4th respondent directing removal of encroachments from the above said survey Numbers. Challenging the same, the present petition has been filed.

4. Learned counsel for the petitioner submits that though the revenue records as well as the earlier FMB does not reflect any public pathway in the petitioner's property, however, the said pathway has been wrongly



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mentioned in the FMB which was issued later in point of time, based on which, the order impugned in this Writ Petition has come to be passed without conducting a proper enquiry between the parties and even without verifying the relevant records. Therefore, the order impugned in this Writ Petition is liable to be set aside.

5. On the above contentions, this Court, heard the learned Additional Government Pleader appearing for the respondents and perused the materials available on record.

6. A perusal of the materials available on record reveals that the survey of the property has been taken up on the representation of the third parties without affording an opportunity to the petitioner to submit his objections and documents, which is a clear violation of the principles of natural justice. In such view of the matter, the impugned order is set aside and the petitioner is directed to submit the relevant documents before the 4th respondent, within a period of two weeks from the date of receipt of a copy of this order. On receipt of the same, the 4th respondent is directed to verify



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the same and conduct a fresh enquiry after affording an opportunity to the petitioner and other aggrieved persons concerned and pass appropriate orders in accordance with law, within a period of twelve weeks thereafter.

7. Accordingly, this Writ Petition is allowed with the aforesaid directions. No Costs.

25.11.2022

NHS

Index : Yes / No

Internet : Yes / No



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M.DHANDAPANI, J.

NHS

To

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