



W.P.(MD)No.2427 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 18.07.2022

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**
and
THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P(MD)No.2427 of 2022

B.Sutha

... Petitioner

Vs.

1.The District Collector,
Madurai District, Madurai.

2.The Commissioner,
Madurai Corporation, Madurai.

3.Murugan

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, to direct the 2nd respondent to vacate the encroachment of the common path by 3rd respondent herein the path which is used for sewerage purpose and drinking water channel within a time frame stipulated by this Court.



W.P.(MD)No.2427 of 2022

For Petitioner : Mr.A.Ganesan
For R1 : Mr.J.Ashok
Additional Government Pleader
For R2 : Mrs.S.Devasena
For R3 : No appearance

ORDER

(Order of the Court was made by **S.S.SUNDAR, J.**)

This Writ Petition is filed for issuance of a Writ of Mandamus to direct the second respondent to remove the encroachment in the common path by the third respondent, the path, which is used for sewerage purpose and drinking water channel.

2. Heard Mr.A.Ganesan, learned counsel appearing for the petitioner, Mr.J.Ashok, learned Additional Government Pleader appearing for the first respondent and Mrs.S.Devasena, learned counsel appearing for the second respondent.



W.P.(MD)No.2427 of 2022

3.It is the case of the petitioner that she is the actual owner of the House in T.S.No.602, Ward No.8, Block No.7, Door No.8A, Tahsildar Pallivasal Street, Madurai. It is further stated that the sewerage and drinking water pipeline are connected to the petitioner through the pipeline in T.S.No.605.

4.The grievance of the petitioner is that the third respondent in the writ petition is creating nuisance by blocking the common lane either by putting iron shutters or constructing wall in the pathway. Further, it is alleged that the third respondent has also damaged the drainage and drinking water pipeline so as to harass the petitioner.

5. Despite notice to the third respondent both, through the Court as well as privately, the respondent evaded service. It is seen that the notice sent to the third respondent is returned with an endorsement "not claimed". In the said circumstances, this Court is of the view that the third respondent is evading service. Having regard to the nature of



W.P.(MD)No.2427 of 2022

endorsement, the service of notice can be taken as valid.

Even though the petitioner asked for a positive direction, this Court is inclined to issue a direction so that any action taken against the removal of encroachment will be made in accordance with law.

6. Unfortunately, the learned Counsel appearing for the second respondent reported that the Commissioner, Madurai Corporation, is unable to take any action as the third respondent has approached the Civil Court and obtained an order of permanent injunction restraining Madurai Corporation from any way interfering with the peaceful possession and enjoyment of the suit property.

7. From the reading of the judgment and decree passed in O.S.No.588 of 2012, by the Additional District Munsif, Madurai Town, it is evident that the suit property is described as the public pathway in Town Survey No.605. It is evident that the suit property, which is the subject matter of suit filed



W.P.(MD)No.2427 of 2022

by the third respondent is not the property, in which the localbody has initiated action for removal of encroachment. In short, the pathway/lane comes under Town Survey No.605 and not in Survey Nos.602 and 603, which is the subject matter of suit. When it is noted by the second respondent that the third respondent has encroached the public lane which vest with the second respondent, it is for the second respondent to initiate/initiate appropriate action against the encroacher and to see that the entire public lane is available to the public.

8. Therefore, without expressing any opinion on the merits of the case, the second respondent is directed to initiate proceedings to remove the encroachment in the common pathway or lane made in Tahsildar Pallivasal Street, after following due process, within a period of twelve weeks from the date of receipt of a copy of this order. It is made clear that before passing final order directing the encroacher to remove the encroachment, there shall be a survey conducted by the Town Surveyor in the presence of the



W.P.(MD)No.2427 of 2022

petitioner as well as the third respondent to identify the extent and the manner of encroachment. In case, the encroachment is confirmed, it is open to the second respondent to issue notice under the provisions of Madurai City Municipal Corporation Act. The second respondent shall thereafter initiate action for removal of encroachment and see that the encroachment in the public street/lane is removed to ensure that the entire width of the road as per the Town Survey Register is available for the public to use. The entire exercise shall be commenced and completed by the second respondent within a period of four weeks from the date of survey, which shall be completed within a period of four weeks from the date of receipt of a copy of this order.

9. Accordingly, the Writ Petition is disposed of. No costs.

[S.S.S.R., J.] [S.S.Y., J.]
18.07.2022

Index : Yes / No

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W.P.(MD)No.2427 of 2022

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W.P.(MD)No.2427 of 2022

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W.P(MD)No.2427 of 2022

18.07.2022