



W.P.(MD)No.13963 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.07.2022

CORAM

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

W.P(MD)No.13963 of 2022

and

W.M.P(MD)Nos.9934 and 9935 of 2022

M.N.Mayileri

... Petitioner

Vs.

1.The Assistant Divisional Engineer,
Office of the Assistant Divisional Engineer,
Maintenance, Madurai West, Madurai.

2.The Tahsildar, Madurai North Taluk, Madurai.

... Respondents

(R2 *suo motu* impleaded vide order of this Court, dated 04.07.2022)

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the impugned order passed by the respondent under Na.Ka.No.7/2022/EeVaAa, dated 15.06.2022 and to quash the same as illegal and further, to direct the respondents to survey the said property and to mark the portion of encroachment if any upon the Highways by giving opportunity to the petitioner.

For Petitioner :Mr.K.R.Laxman

For Respondents :Mr.S.P.Maharajan

Special Government Pleader



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ORDER

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

Challenging the impugned notice, dated 15.06.2022 issued by the first respondent and to direct the respondents to survey the property and to mark the portion of encroachment, if any, upon the Highways by giving opportunity to the petitioner, the above Writ Petition is filed.

2.Heard Mr.K.R.Laxman, learned Counsel for the petitioner and Mr.S.P.Maharajan, learned Special Government Pleader, who takes notice on behalf of the respondents. By consent of both parties, the Writ Petition is taken up for final disposal at the admission stage itself.

3.By the impugned notice, the petitioner was directed to submit a representation/objection with regard to the encroachment of highways land by the petitioner. Strangely, in the same notice, the petitioner was directed to remove the encroachment on or before 01.07.2022, failing which, encroachment will be removed by the Highways.

4.The case of the petitioner is that the petitioner, who is residing in his ancestral property measuring 18 cents comprised in three different survey numbers and that the said land was in the enjoyment of



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the petitioner and his ancestors. The petitioner stated that he has also constructed a dwelling house and residing in the said place.

5.Stating that the petitioner has not encroached into any portion of the highways, the petitioner has raised a specific ground that the impugned notice was issued without issuing any notice of hearing or without conducting any survey. Even the description relating to the encroached portion of highways is not given in the impugned notice. In the said circumstances, this Court is inclined to set aside the impugned order with a liberty to the first respondent to proceed afresh. Since the Tahsildar, who has to conduct survey, is not made as a party in this Writ Petition, the Tahsildar, Madruai North Taluk, Madurai, is *suo motu* impleaded as second respondent in this Writ Petition.

6.For the foregoing reasons, the impugned order issued by the first respondent, dated 15.06.2022 is hereby quashed and the second respondent is directed to conduct a survey after issuing notice to the petitioner and the first respondent. In case, the petitioner or anyone is in encroachment of any portion of highways as per the report of the Tahsildar, it is open to the first respondent to initiate proceedings for removal of encroachment after issuing notice to the petitioner or anyone, who is found to be in encroachment and final order shall be passed only



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after hearing the objection or representation in response to the show cause that is required to be issued by the first respondent. The Writ Petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

[S.S.S.R., J.] [S.S.Y., J.]
04.07.2022

Index : Yes / No

cmr

To

- 1.The Assistant Divisional Engineer,
Office of the Assistant Divisional Engineer,
Maintenance, Madruai West, Madurai.
- 2.The Tahsildar, Madurai North Taluk, Madurai.



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