



W.P.(MD)No.15491 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.07.2022

CORAM:

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

W.P.(MD)No.15491 of 2022
and W.M.P.(MD) No.11159 of 2022

M.Amalanathan Peter

... Petitioner

Vs.

1.The District Collector,
Madurai District,
Madurai.

2.The Commissioner,
Madurai Corporation,
Madurai.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Mandamus, forbearing the 2nd respondent from evicting the petitioner from his residential house which is situated in Plot No.3, Manoranjitham Street, Bharathiyar Nagar 12th Street, Vilangudi, Madurai – 18 without conducting survey and without following due process of law.

For Petitioner

: Mr.G.R.Satheesh

For 1st Respondent

: Mr.J.Ashok
Additional Government Pleader



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For 2nd Respondent

: Mr.S.Vinayak
Standing Counsel

* * *

ORDER

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

This Writ Petition is filed for issuance of a Writ of Mandamus, forbearing the 2nd respondent from evicting the petitioner from his residential house which is situated in Plot No.3, Manoranjitham Street, Bharathiyar Nagar 12th Street, Vilangudi, Madurai – 18 without conducting survey and without following due process of law.

2. Heard Mr.G.R.Satheesh, learned counsel for the petitioner, Mr.J.Ashok, learned Additional Government Pleader, who accepts notice on behalf of the first respondent and Mr.S.Vinayak, learned Standing Counsel for the second respondent. By consent of both parties, this Writ Petition is taken up for final disposal at the stage of admission itself.

3. The petitioner states that he has constructed a house in his patta land after getting approval from the local body in 2011. It is admitted that the petitioner has received an eviction



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notice dated 14.06.2022, issued by the second respondent, by which, the petitioner was informed that he has constructed his house by encroaching 3 feet in the 26 feet road.

4. It is the case of the petitioner that the second respondent has issued the eviction notice without conducting survey in the presence of the petitioner. The petitioner has given his representation dated 29.06.2022, specifically taking a stand that no part of the road is encroached by the petitioner. The grievance of the petitioner is that the eviction notice was issued without conducting survey or notice to the petitioner.

5. Following the decision of the Hon'ble Supreme Court in ***Madhav Rao Schindia v. Ramesh Jatav [(2006) 1 SCC 379]*** this Court in similar cases has held that eviction order cannot be issued without conducting survey after issuing notice to the petitioner and considering the objections to the show cause notice that may be issued after conducting survey.

6. The request of the petitioner is to consider the representation of the petitioner in response to the eviction notice



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after conducting survey. The request of the petitioner is in tune with the principles laid down by this Court in several writ petitions and it cannot be disregarded.

7. In view of the above, the Writ Petition is partly allowed and the second respondent is directed to conduct survey through the Town Surveyor after issuing notice to the petitioner regarding encroachment. If the petitioner is found to be an encroacher, after conducting survey in his presence, the second respondent shall consider the objections of the petitioner in response to the show cause notice and pass final orders in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

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

Index : Yes / No
sj



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To

1. The Recovery Officer,
Debts Recovery Tribunal, Madurai,
3rd and 4th Floor, Kalyani Towers,
4/162, Madurai – Melur Road, Uthangudi,
Madurai.



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S.S.SUNDAR, J.

and

S.SRIMATHY, J.

sj

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