



W.P.(MD)No.17386 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.08.2022

CORAM:

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

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P.S.Thangavel

... Petitioner

Vs.

1.The Principal Secretary,
Government of Tamil Nadu,
Department of Municipal Administration,
Fort St.George, Chennai-600 009.

2.The District Collector,
Office of the Collectorate, Trichy.

3.The Director,
Town Panchayat, Kuralagam, Chennai.

4.The Deputy Director,
Town Panchayat, Trichy.

5.The Executive Officer,
Office of the Town Panchayat,
Pullampatti, Trichy District.

6.Chitra

7.The Tahsildar,
Lalgudi Taluk,
Trichy District.

... Respondents

(R7 Suo Motu impleaded as party respondent
vide order of this Court dated 04.08.2022 by
SSSRJ & SSYJ)



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Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuing a Writ of Mandamus to direct the respondents 1 to 5 to take appropriate action over the encroachment made by the sixth respondent on the road portion that belongs to Municipality, to an extent of 5.4 meters on the East-West and to an extent of 1.2 meters on the South-North portion in Ward-12, Muthirayar Lane, Melpuram in Pullampadi Town in accordance with law.

For Petitioner : Mr.V.Panner Selvam
For R1, R2, R7 and R8 : Mr.T.Amjad Khan
Government Advocate
For R3 to R5 : Mr.S.P.Maharajan
Special Government Pleader

ORDER

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

This Writ Petition has been filed for issuance of a Writ of Mandamus to direct the respondents 1 to 5 to take appropriate action over the encroachment made by the sixth respondent on the road portion that belongs to Municipality, to an extent of 5.4 meters on the East-West and to an extent of 1.2 meters on the South-North portion in Ward-12, Muthirayar Lane, Melpuram in Pullampadi Town in accordance with law.



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2. Heard Mr.V.Panner Selvam, learned Counsel for the petitioner, Mr.T.Amjad Khan, learned Government Advocate, who takes notice on behalf of the respondents 1, 2, 7 & 8, Mr.S.P.Maharajan, learned Special Government Pleader, who takes notice on behalf of the respondents 3 to 5. By consent of both parties, the Writ Petition is taken up for final disposal at the admission stage itself.

3. Having regard to the order proposed to be passed in this writ petition, notice to the sixth respondent is dispensed with.

4.The petitioner is a resident of the village, which comes under the fifth respondent Town Panchayat. The specific case of the petitioner is that the fifth respondent has found encroachment made by the sixth respondent measuring an extent of 5.4 meters on the East-West and to an extent of 1.2 meters on the South-North. In the above circumstances, the petitioner has come forward to file the above writ petition.



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5. Learned Special Government Pleader appearing for the Local Body viz., Pullampadi I Grade Town Panchayat submitted that the Tahsildar has conducted survey and given a report indicating that the 6th respondent has encroached the property in S.No.318/36, which is classified as a street. However, he fairly admitted that the survey was not conducted after issuing notice to the sixth respondent.

6. Even though the Tahsildar has given a report showing the encroachment by the sixth respondent, this Court following the decision of the Hon'ble Supreme Court in ***Madhav Rao Schindia v. Ramesh Jatav [(2006) 1 SCC 379]*** has held that in matters of encroachments there shall be survey and measurement of properties to identify encroachment either after issuing notice to the encroacher or in the presence of encroacher before proceeding with the removal of encroachment by following a summary procedure.

7. Though the petitioner has referred to the Tahsildar Report, he has not impleaded the Tahsildar. Hence, the Tahsildar, Lalgudi Taluk, Trichy District is suo motu impleaded as 7th respondent in the Writ Petition.



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8. Having regard to the admitted facts, this Court is inclined to dispose of this Writ Petition in the following directions:-

(i) The Tahsildar, Lalkudi Taluk, Trichy District - 7th respondent is directed to conduct survey with the assistance of the Surveyor after issuing notice to the petitioner as well as the sixth respondent.

(ii) If the Tahsildar finds that there is an encroachment by the 6th respondent, a report shall be submitted to the 5th respondent local body.

(iii) The 5th respondent, thereafter, shall issue notice as contemplated under Section 181 of the District Municipalities Act, 1920. In case the 5th respondent is unable to carryout eviction inspite of confirmation of encroachment by the 6th respondent, the Tahsildar, Lalgudi Taluk is directed to initiate proceedings for removal of encroachment under Tamil Nadu Land Encroachment Act, 1905.

(iv) It is made clear that the 6th respondent shall be put on notice, in other words proceedings either under the District Municipalities Act, 1920 or Tamil Nadu Land Encroachment Act, 1905 in accordance law can be commenced and completed only after issuing show cause notice under the statutory provisions and



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pass final orders only after considering the objections and representation of the 6th respondent, the alleged encroacher.

9. This Writ Petition is disposed with the above directions.

10. It is brought to the notice of this Court that the first respondent Principal Secretary has been added without any cause. It has now become a practice as we find that every writ petition is filed before this Court by adding the Chief Secretary or Principal Secretary of the Government department to embarrass the subordinate Officers. Since this Court finds that the first respondent has been unnecessarily added without any cause, the petitioner is directed to pay a cost of Rs.2,000/- (Rupees Two Thousand only) to the Legal Services Committee attached to this Bench within a period of two weeks from the date of receipt of a copy of this order.

[S.S.S.R., J.] [S.S.Y., J.]
04.08.2022

Index : Yes / No
sj



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To

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- 3.The Director,
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- 4.The Deputy Director,
Town Panchayat, Trichy.
- 5.The Tahsildar,
Lalkudi, Trichy District.



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S.S.SUNDAR, J.

and

S.SRIMATHY, J.

sj

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