



W.P.(MD)No.17443 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED :04.08.2022

CORAM:

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

W.P.(MD)No.17443 of 2022
and
W.M.P(MD)No.12709 of 2022

S.Prabakaran,
Advocate/President,
Vasanthanagar Kudiyiruppor Nala Sangham,
Y.Narasingham, Othakadai,
Madurai District – 625 107.

... Petitioner

Vs.

1. The District Collector,,
Collectorate, Madurai,
Madurai District-625020.

2. The Assistant Engineer,
PWD / WRD, Periyar Main Canal Section,
Madurai Sub-Division No.1,
Madurai District-625002.

3. The Tahsildar,
Madurai East Taluk, Othakadai,
Madurai District-625107.

4.M.Latha

... Respondents



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Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Letter No. / Encroachment / 2022 /U.Po. (Madurai) / Dated 21.07.2022 on the file of the Respondent No.2 and quash the same as illegal and consequently to direct the Respondent No.3 to survey the land in Survey No.100/4 in which Lord Vinayagar Temple is situated within the time stipulated by this Hon'ble Court.

For Petitioner	: Mr.S.Louis
For Respondents	: Mr.N.Satheesh Kumar, Additional Government Pleader

ORDER

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

This writ petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the order of the second respondent, dated 21.07.2022 and consequently, to direct the third respondent to survey the land in Survey No.100/4 in which the subject temple is situated.

2. Heard Mr.S.Louis, learned counsel for the petitioner and Mr.N.Satheesh Kumar, learned Additional Government Pleader who takes notice for the respondents 1 to 3.



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3. The petitioner in the affidavit filed in support of this writ petition has stated that he is the President of Vasantha Nagar Kudiyiruppor Nala Sangam which was registered in the year 1995. It is further stated that the said Sangam purchased an extent of 223 sq. ft. in Survey No.100/4 at Y.Narasingam IV-Bit Village, Madurai District and a Vinayagar temple is constructed in the said patta land. Though the petitioner admitted that the second respondent had issued a notice in Form – I and in Form – II earlier by invoking the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, alleging that an extent of 60 sq. mt., in Survey No.99 had been encroached by putting up compound wall of the temple, the petitioner has not claimed any right in respect of Survey No.99 in the said Village.

4. In the entire affidavit, the petitioner has not claimed any right over any portion of Survey No.99 in the said village. It is to be stated that in all notices issued by the respondents earlier, it is specifically indicated that the encroachment is up to an extent of 60 sq. mt. in Survey No.99 and not with reference to Survey No.100/4 to which the petitioner claims that patta was issued pursuant to a sale and



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temple was constructed. Despite Form-II and III notices issued by the second respondent, it is admitted in the affidavit that the petitioner has not challenged the said notices. There is no explanation in the whole affidavit as to how the petitioner now challenges the proceedings initiated by the respondents in respect of the land in Survey No.99. It is to be seen that in the notice issued in Form – III, the encroacher was stated to have encroached an extent of 60 sq. mt. (around 750 sq. ft) in S.R.No.99 in Narasingam IV bit in Madurai East Taluk which is part of Vouval thottam supply channel.

5. As a matter of fact, the affidavit does not disclose a cause of action for the petitioner to approach this Court challenging the impugned order which is issued in respect of a parcel of a land in Survey No.99. Though the learned counsel appearing for the petitioner tried to convince this Court that there are some issues relating to identity of the property and that the respondents are trying to evict the temple in respect the property for which patta has been issued (Survey No.100/4), under the guise of removing encroachment in Survey No.99, the entire affidavit does not refer to such a stand by the petitioner.



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6. It is the case where the petitioner has simply filed the writ petition to quash the impugned notification on the basis of his claim of title in respect of Survey No.100/4 which has nothing to do with the property for which the respondents have initiated eviction proceedings for removal of encroachment.

7. It is to be noted that the petitioner's claim of title is only in respect of an extent of about 223 sq. ft., on the basis of a sale deed whereas the property alleged to have been encroached by the temple / petitioner is a property measuring an extent of more than 700 sq. ft. which is classified as water body. Since the petitioner has no dispute with regard to the classification of land in Survey No.99, this Court is unable to find any defence.

8. It is true that even an encroacher is entitled to notice before he is sought to be evicted. In this case, the petitioner's case is entirely different. He does not admit encroachment in Survey No.99. Therefore, for want of *bonafides* and cause of action, this Court is unable to entertain the writ petition. The petitioner has come to Court with unclean



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hands. In response to Form II notice, the petitioner had stated that they would remove the wall if the respondent wants to restore channel. In the representation of the petitioner dated 18.06.2021, the petitioner did not dispute the survey or the encroachment by the compound wall in S.No.99. The extent and area of encroachment as per the impugned order in a channel cannot be permitted. However, the learned counsel tried to mislead this Court by referring to the averments made in the affidavit filed in support of this petition and his subsequent representation. Hence, this Court finds no merits in this writ petition and hence, this writ petition is dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

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

[S.S.Y., J.]

Index : Yes / No

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