



W.P(MD)No.17998 of 2021

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.11.2022

CORAM:

**THE HONOURABLE MR.JUSTICE R.MAHADEVAN
and
THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD**

W.P(MD)No.17998 of 2021

Sangari

... Petitioner

vs.

- 1.The District Collector,
Tenkasi District, Tenkasi.
- 2.The Regional Director of Municipal Administration,
Regional Municipal Administration Office,
Tirunelveli.
- 3.The Revenue Divisional Officer,
Tenkasi,
Tenkasi District.
- 4.The Commissioner,
Tenkasi Municipality,
Tenkasi.

5.P.Mariappan

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings in Na.Ka.No.2145/21/F1, dated 15.09.2021 issued by the fourth respondent and quash the same as



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illegal and consequently to direct the fourth respondent to remove the encroachments made by the fifth respondent in public pathway in lands gifted to the fourth respondent Municipality under registered gift deed dated 02.08.2018 as per Section 182 of the Tamil Nadu District Municipalities Act, 1920 and to ensure the pathway is free for access by considering the petitioner's representation, dated 10.08.2021 within the time frame fixed by this Court.

For Petitioner : Mr.VR.Shanmuganathan
For RR 1 to 3 : Mr.P.Thilak Kumar
Government Pleader
For R – 4 : Mr.P.Athimoola Pandian
For R – 5 : Mr.H.Arumugam

ORDER

(Order of the Court was made by R.MAHADEVAN, J.)

Challenging the impugned proceedings issued by the fourth respondent in Na.Ka.No.2145/21/F1, dated 15.09.2021, this Writ Petition has been filed seeking consequential direction to the fourth respondent to remove the encroachments made by the fifth respondent in the public pathway situated in the lands gifted to the fourth respondent Municipality under the registered gift deed, dated 02.08.2018 and to ensure that the said pathway is free for access, by considering the petitioner's representation, dated 10.08.2021.



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2.The learned counsel appearing for the petitioner submitted that though the petitioner approached the fourth respondent by submitting a representation, dated 10.08.2021 for removal of the said encroachment made by the fifth respondent, the fourth respondent, without considering the fact that the particular piece of land in issue had already been gifted by a third party in favour of the fourth respondent Municipality, wherein, the fifth respondent has made encroachment and without even conducting any enquiry, rejected the request of the petitioner, by proceedings in Na.Ka.No. 2415/21/F1, dated 15.09.2021, stating that the pathway in question is a private property of the individual and further the layout is unapproved and hence, the fourth respondent cannot take any action on his representation. Challenging the same, the petitioner has filed the present Writ petition.

3.On the other hand, the learned counsel appearing for the fifth respondent submitted that the place in question is nothing but a private property which is fortified by a patta issued by the competent authority and therefore, the claim of the petitioner has rightly been rejected by the impugned order which does not require interference at the hands of this Court.



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4.Though the impugned order proceeds as if the property in question namely, Survey No.1406/1C is a private property of the individual, perusal of the gift deed executed in favour of the fourth respondent Municipality on 02.08.2018 shows that the land measuring an extent of 11840 sq. ft in Survey No.1406/1C of Keelapuliyur Village, Tenkasi Taluk, has been gifted to the fourth respondent Municipality. It is the specific case of the petitioner that the aforesaid gifted land is encroached upon by the fifth respondent and the authorities failed to consider the gift deed and mechanically rejected her claim as if it is a private property of the individual and it is an unapproved plot and therefore, further action could not be taken by the fourth respondent Municipality. It is not known on what basis, the fourth respondent has come to the conclusion that the aforesaid property is the private property of the individual and there is no documentary evidence relied for such conclusion. Therefore the impugned order is liable to be set aside.

5.Accordingly, the impugned order, dated 15.09.2021 passed by the fourth respondent is set aside and the Writ Petition is allowed. We direct the fourth respondent to look into the claim of the petitioner strictly in the



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light of the gift deed, dated 02.08.2018 by conducting a proper enquiry with the parties, consider their objection and then pass appropriate orders. If the fourth respondent ultimately comes to the conclusion that the property in question is belonged to the Municipality and same is encroached upon then, he shall remove the same, after affording sufficient opportunity of personal hearing to all the parties concerned and by due process of law. Such an exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

[R.M.D.,J.] & [J.S.N.P.,J.]
15.11.2022

Index : Yes / No
Internet : Yes
ps

To

- 1.The District Collector,
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R.MAHADEVAN,J.

and

J.SATHYA NARAYANA PRASAD,J.

ps

**ORDER MADE IN
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15.11.2022