



W.P.(MD) No.18216 of 2021

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.10.2022

CORAM:

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

W.P.(MD) No.18216 of 2021

and

W.M.P.(MD) No.15050 of 2021

Kathiresan

... Petitioner

-VS-

1.The District Collector
Madurai District, Madurai

2.The Tahsildar
Taluk Office
Madurai North Taluk
Madurai District

3.The Block Development Officer
Madurai West Panchayat Union
Madurai West
Madurai District

4.The President
Pothumbu Panchayat
Madurai West Union
Pothumbu, Madurai District

5.Lingam

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of mandamus directing the respondents 2 and 3 to remove the encroachment made in the 10 feet road / pathway south to plot No.10 in the layout in Survey No.1/9 of Pothumbu Revenue Village Bit (I) of Pothumbu Village Panchayat, Madurai West Panchayat Union, Madurai North Taluk, Madurai District, made by the fifth respondent.

For Petitioner : Mr.K.P.Krishnadoss

For Respondents : Mr.S.P.Maharajan
Special Government Pleader for R1 to R4
Mr.S.Vikram for R5

ORDER

[Order of the Court was made by R.MAHADEVAN, J.]

The prayer in this writ petition is for issuance of a writ of mandamus directing the respondents 2 and 3 to remove the encroachment made by the fifth respondent in the 10 feet road / pathway, situated on the southern side of Plot No.10, in Survey No.1/9 of Pothumbu Revenue Village Bit (I), Pothumbu Village Panchayat, Madurai West Panchayat Union, Madurai North Taluk, Madurai District.



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2. According to the petitioner, the fifth respondent has made encroachment in the 10 feet pathway situated on the southern side of Plot No. 10 purchased by him and though the authority concerned, after due survey, directed him to remove the encroachment, till date, he has not removed the encroachment. Hence, this writ petition.

3. The learned Special Government Pleader appearing for the respondents 1 to 4, on instructions, submitted that the encroachment made by the fifth respondent in subject land, as projected by the petitioner, would be removed in accordance with law.

4. The learned counsel appearing for the fifth respondent submitted that the fifth respondent had earlier filed W.P.(MD) No.16063 of 2021 before this Court challenging the notice dated 23.07.2021, issued by the fourth respondent herein, on the grounds of lack of jurisdiction of the authority in issuing the said notice and violation of the principles of natural justice and this Court, by order dated 08.09.2021, set aside the said notice dated 23.07.2021 and remitted back the matter to the file of the third respondent herein, to pass appropriate orders in accordance with law, after giving notice to the fifth respondent herein. However, the petitioner has filed



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WEB COPY this writ petition once again against the fifth respondent alleging that the fifth respondent has made encroachment in the pathway and the same is to be removed.

5. By way of reply, the learned counsel for the petitioner submitted that the fifth respondent has suppressed several material facts in the said writ petition.

6. On perusal of record, it is seen that the dispute between the petitioner and the fifth respondent is for removal of encroachment made in the pathway. Based on the representation of the petitioner for removal of the encroachment, the authority concerned surveyed the subject land, marked the extent of encroachment and *vide* notice dated 23.07.2021, directed the fifth respondent to remove the aforesaid encroachment made by him. The fifth respondent challenged the said notice before this Court, by filing a writ petition in W.P.(MD) No.16063 of 2021 and this Court, by order dated 08.09.2021, set aside the said notice and remanded back the matter for fresh consideration. The relevant portion of the said order is extracted hereunder:

“3. The learned counsel for the Petitioner submitted that no opportunity was given by any



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of the respondents before issuing the impugned notice, dated 23.7.2021. We are at loss to understand the jurisdiction of the fourth respondent in issuing the impugned notice, dated 23.7.2021. The fourth respondent has not stated anything as to under which Act and provision, the notice is being sent to the Petitioner. Except stating that the encroachment would be removed on or before 2.8.2021, nothing has been stated in the notice.

4. In these circumstances, the impugned notice, dated 23.7.2021 is liable to be set aside. Accordingly, the same is set aside. The matter is remitted back to the third respondent to pass appropriate orders in accordance with law, after giving notice to the Petitioner.

5. With these observations, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.”

7. In such circumstances, in order to give a quietus to the dispute between the parties concerned, this Court deems it fit to direct the authority concerned to conduct a survey afresh in the presence of the petitioner as well as the fifth respondent and then proceed further in accordance with law.



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8. Accordingly, the authority concerned is directed to conduct a survey afresh in the subject land in the presence of the petitioner as well as the fifth respondent and if there is any encroachment as pointed out by the petitioner, the same shall be removed, after giving sufficient opportunity to all the parties concerned and by following due process of law, within a period of eight (8) weeks from the date of receipt of a copy of this order.

9. With the above direction, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

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

27.10.2022

Index : Yes / No
Internet : Yes / No

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Madurai North Taluk,
Madurai District.



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