



W.P.(MD) No.7338 of 2014

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.09.2022

CORAM:

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

W.P.(MD) No.7338 of 2014

K.Adhikari

... Petitioner

-vs-

1.The District Collector
Theni District, Theni

2.The Tahsildar
Theni Taluk
Theni District

3.Theni Panchayat Union
Rep.by its Commissioner
Theni

4.Unchampatti Panchayat
rep.by its President
Annanji Post, Theni Taluk
Theni District

5.Kamayee

... 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 to 4 to remove the encroachment made by the fifth respondent in the pathway situated in Survey No.41, Unchampatti Village, Annanji Post, Theni Taluk, as directed by the first respondent in their proceedings in Na.Ka.No.38588/2013/A5, dated 09.12.2013, within a time frame fixed by this Court.

For Petitioner : Mr.R.Subramanian

For Respondents : Mr.N.GA.Nataraj
Government Advocate for R1 & R2
Mr.T.S.Mohamed Mohideen for R3
Mr.T.K.Janardhanan for R4

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 to 4 to remove the encroachment made by the fifth respondent in the pathway situated in Survey No.41, Unchampatti Village, Annanji Post, Theni Taluk, as directed by the first respondent in their proceedings in Na.Ka.No.38588/2013/A5, dated 09.12.2013, within a time frame fixed by this Court.



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2. According to the petitioner, he is residing in Survey No.40/1, Door No.159/1, Unchampatti Village, Annanji Post, Theni Taluk. In front of the house property standing in the name of his wife Selvi. there is an Odai Poramboke in Survey No.41, which is used as a pathway to reach the main road. However, the fifth respondent put up a thatched house in the said pathway and blocked the ingress and egress to the said house property. Therefore, the petitioner's wife filed a suit in O.S.No.212 of 2006, before the District Munsif Court, Theni, seeking declaration and mandatory injunction. The Trial Court, by judgment and decree dated 27.03.2007, decreed the suit insofar as the relief of declaration and as regards the relief of mandatory injunction, it had directed the authority concerned, to find out the encroachment and to remove the same in the manner known to law. The appeal in A.S.No.63 of 2009 filed by the fifth respondent before the Sub Court, Theni, challenging the judgment and decree passed in the original suit, has also been dismissed by judgment and decree dated 25.11.2009.

3. Further, according to the petitioner, since the encroachment made by the fifth respondent has not been removed, he submitted



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representations dated 16.05.2012, 26.06.2012 and 05.08.2012 to the respondents. Despite the same, no action has been taken by the respondents. Therefore, the petitioner filed W.P.(MD) No.14031 of 2012 seeking a direction to the respondents to consider his representations and remove the abovesaid encroachment. This Court, by order dated 20.11.2012, after hearing both sides, directed the first respondent herein, to consider the petitioner's representation dated 05.08.2012 and pass orders on merits and in accordance with law, within a period of twelve weeks.

4. The grievance of the petitioner is that though pursuant to the directions issued by this Court, the respondents conducted an enquiry and identified the encroachment, till date the encroachment has not been removed. Hence, this writ petition.

5. The learned Standing Counsel appearing for the third respondent – Panchayat Union, on instructions, fairly submitted that the encroachment in the Odai Poramboke would be removed, within eight (8) weeks.



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6. Recording the above submission of the learned Standing Counsel appearing for the third respondent and directing the respondents to remove the encroachment made by the fifth respondent in Survey No.41 of Unchampatti Village, Annanji Post, Theni Taluk, as expeditiously as possible, preferably within a period of eight (8) weeks from the date of receipt of a copy of this order, this writ petition is disposed of. No costs.

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

28.09.2022

Index : Yes / No

Internet : Yes / No

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To:

1.The District Collector,
Theni District, Theni.

2.The Tahsildar,
Theni Taluk,
Theni District.



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