



W.P.(MD)No.25642 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.11.2022

CORAM

THE HONOURABLE MR.JUSTICE **R.MAHADEVAN**

and

THE HONOURABLE MR.JUSTICE **J.SATHYA NARAYANA PRASAD**

W.P(MD)No.25642 of 2022

A.Ahamed Baseer

... Petitioner

Vs.

1.The District Collector,
Theni District,
Theni.

2.The Commissioner,
Cumbum Municipality,
Cumbum,
Theni District.

3.A.Ponnuthai

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Mandamus, to direct the 2nd Respondent herein to proceed further with his proceedings in Na.Ka.No. 2185/2018/F.1, dated 30.10.2018 and to remove the encroachment made by the 3rd respondent in T.S.No.10, Block No. 22, Survey Ward A in Cumbum Mettu Cross Street, Cumbum, Theni District within a time limit as stipulated by this Hon'ble Court.

For Petitioner

: Mr.S.Palani Velayutham

For Respondents 1 & 2

: Mr.S.P.Maharajan

Special Government Pleader

* * *



W.P.(MD)No.25642 of 2022

ORDER

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

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The petitioner has come forward with this writ petition praying to issue a writ of mandamus, directing the 2nd Respondent to proceed further with his proceedings in Na.Ka.No. 2185/2018/F. 1, dated 30.10.2018 and to remove the encroachment made by the 3rd respondent in T.S.No.10, Block No. 22, Survey Ward A in Cumbum Mettu Cross Street, Cumbum, Theni District. within a time frame.

2. Heard Mr.S.Palani Velayutham, learned counsel for the petitioner and Mr.S.P.Maharajan, learned Special Government Pleader, who accepts notice on behalf of the respondents 1 and 2. By consent of both parties, the Writ Petition is taken up for final disposal at the admission stage itself.

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

4. Alleging that the 3rd respondent has made encroachment in the Cumbum Mettu Cross Street in T.S.No.10,



W.P.(MD)No.25642 of 2022

Block No.22, Survey Ward, Cumbum, Theni District, and put up a shop along with a house and has let the same for rent and thereby preventing the ingress and egress of the public and though the second respondent has passed an order in Na.Ka.No. 2185/2018/F. 1, dated 30.10.2018, directing the 3rd respondent to remove the encroachment within a period of 7 days and the suit filed by the 3rd respondent against the respondents 1 & 2 in O.S.No.241 of 2018, on the file of the Sub Court, Uthamapalayam, for declaration and injunction was dismissed for default on 14.03.2022, no steps were taken to remove the encroachment, the petitioner submitted a representation to the respondents 1 and 2 on 03.03.2022, and the same, according to the learned counsel for the petitioner, remains as such. Hence, the Writ Petition.

5. Learned counsel for the petitioner would further submit that though the petitioner has sought for a larger relief, he would be satisfied, if a direction is issued to the second respondent to dispose of his representation dated 03.03.2022, with regard to removal of the encroachment made by the third respondent on the basis of the proceedings of the 2nd respondent in Na.Ka.No. 2185/2018/F.1, dated 30.10.2018, within a time frame.



W.P.(MD)No.25642 of 2022

6. Considering the limited scope of the prayer now sought for by the petitioner, without expressing any opinion on the merits of the claim made by the petitioner, either in the representation or in the affidavit filed in support of the Writ Petition, this Writ Petition is disposed of with a direction to the second respondent to consider the representation of the petitioner dated 03.03.2022, and pass appropriate orders on merits and in accordance with law. If there is any encroachment as claimed by the petitioner, after issuing notice and conducting survey in the presence of the petitioner, the 3rd respondent and any other parties concerned, the authorities concerned shall take necessary action for removal of the encroachment, after affording an opportunity of hearing to all the parties concerned and by following due process of law. Such an exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. No costs.

[R.M.D., J.] [J.S.N.P., J.]
14.11.2022

Internet : Yes / No
Index : Yes / No
sj



W.P.(MD)No.25642 of 2022

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