



WEB COPY



W.P. No.12748 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2023

CORAM:

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN
AND
THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

W.P. No.12748 of 2023 & W.M.P. No.12542 of 2023

S. Saraswathy

Petitioner

v

- 1 The District Collector
Erode District
Erode
- 2 The Revenue Divisional Officer
Erode Revenue Division
Erode
- 3 The Tahsildar
Perundurai Taluk
Perundurai
Erode District
- 4 The Block Development Officer
Perundurai
Erode District
- 5 The President
N. Kandhampalayam Panchayat
Perundurai Taluk
Erode District
- 6 R. Kolandasamy

Respondents



W.P. No.12748 of 2023

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus forbearing the respondents 1 and 3 from conducting survey of the land situated in R.S. No.4/4,4/5 and 4/6, N.Kandhampalayam Village, Perundurai Taluk, Erode District, by considering the objection dated 11.04.2023 filed by the petitioner, till final judgment and decree is passed in O.S. No.44 of 2022, pending on the file of the Subordinate Court, Perundurai.

For petitioner	Mr. S. Saravanan
For RR 1 to 5	Mr. J. Ravindran
	Addl. Adv. General (Coordination)
	assisted by Mr. A. Selvendran
	Spl. Govt. Pleader

ORDER

(made by S. VAIDYANATHAN, J.)

This writ petition has been filed seeking a writ of mandamus forbearing the respondents 1 and 3 from conducting survey of the land situated in R.S. No.4/4,4/5 and 4/6, N. Kandhampalayam Village, Perundurai Taluk, Erode District, by considering the objection dated 11.04.2023 filed by the petitioner, till final judgment and decree is passed in O.S. No.44 of 2022, pending on the file of the Subordinate Court, Perundurai.



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2 When a person encroaches a public place, the Court is empowered to direct conduct of survey. It is needless to point out that the Civil Court is also not barred from directing conduct of survey. In this case, as the Government feels that there is encroachment, and when a notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, is issued, appropriate orders need to be passed under Section 6, *ibid.*, after getting reply/objections from the encroacher. When an order is passed, normally, the plea taken by a writ petitioner before this Court is that survey is not conducted. But, in the instant case, it is topsy turvy. Litigants cannot blow hot and cold.

3 In such perspective of the matter, we hold that the Government will have to conduct survey, if necessary and also take a decision. The survey that is going to be conducted may or may not be helpful to the petitioner. Hence, the petitioner's prayer is not justifiable and we are not inclined to grant the relief sought in this writ petition.



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It is submitted by the State that notice has been issued to the encroachers. It is open to the writ petitioner as well the contempt petitioner to raise objections, if any.

The writ petition stands dismissed with the above observations sans costs. Connected W.M.P. stands closed.

(S.V.N., J.) (S.S.K., J.)
07.11.2023

cad



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Perundurai, Erode District
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Perundurai Taluk
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S. VAIDYANATHAN, J.
and
SATHI KUMAR SUKUMARA KURUP, J.

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