



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **28.07.2023**

CORAM:

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR
AND
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

**W.P(MD)NO.633 OF 2023
and
W.M.P(MD)Nos.631 and 634 of 2023**

D.Daniel Raj

:Petitioner

.VS.

- 1.The District Collector,
Kanyakumari District,
Nagercoil.
- 2.The Assistant Director of Town Panchayats,
Collectorate Campus,
Nagercoil.
- 3.The Executive Officer,
Valvachagoshtam Ist Grade Town Panchayat,
Kunnamparai,
Kattathurai Post,
Kanyakumari District.

4.Robert Alexandar

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records of the order passed by the third respondent vide Na.Ka.No. 157/2011/Aa1, dated 3.1.2023(demolition notice) and to quash the same.



For Petitioner :Mr.C.T.Perumal
For Respondents :Mr.M.Lingadurai
1 to 3 Special Govt.Pleader
For Respondent-4 :Mr.S.Parthasarathy

O R D E R

(Order of the Court was made by S.S.SUNDAR,J)

This Writ Petition is filed seeking issuance of a Writ of Certiorari calling for the records of the order passed by the third respondent vide Na.Ka.No.157/2011/Aa1, dated 3.1.2023(demolition notice) and to quash the same.

2.Heard the learned counsel appearing on either side and perused the materials placed before this Court.

3.It is the case of the Petitioner that the property in R.S.No. 131/6B and R.S.No.131/2C2A1A belongs to him and the property stands in his name. It is his case that he has put up a compound wall within his boundary. However, it is his case that at the instance of the fourth respondent, this Court entertained earlier a Writ Petition in W.P(MD)No.22691 of 2022 and this Court, by order, dated 28.09.2022, disposed of the Writ Petition, with a direction to



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the official respondents to remove the encroachment/unauthorized construction, if any, after affording an opportunity of hearing to the parties concerned and by following due process of law.

4. Though the Petitioner herein was the fourth respondent in the earlier Writ Petition filed by the fourth respondent herein, no notice was issued to the Petitioner. In view of the order passed by this Court, the Petitioner apprehended that the official respondents may unnecessarily disturb his possession and construction which is well within his patta land.

5. The third respondent, however, has produced before this Court photographs and plan to show that the construction is in the public pathway. The question as to whether the Petitioner has constructed his compound wall well within his patta land or not, cannot be gone into by the officials, even though the Tahsildar in his communication, dated 8.6.2023 states that both the survey numbers were surveyed.

6. The Official respondents are under the legal obligation to remove the encroachment in the public pathway by initiating



proceedings under the Tamil Nadu Land Encroachment Act, 1905 or under the provisions of the Panchayat Act. The proceedings are summary in nature and they have to conduct the survey and measurement before describing the possession of a third party as an encroachment.

7. It is in these circumstances, this Court is inclined to dispose of the Writ Petition, on the following lines:-

1. the third respondent/Executive Officer is directed to cause inspection and survey by the Tahsildar concerned with the specific request to demarcate the patta lands of the Petitioner on the basis of the revenue records.

2. if the compound wall and construction put up by the Petitioner is well within his patta lands in R.S.No.131/6B and R.S.No.131/2C2A1A, no action be taken against him. However, in case, if there is any encroachment made by the Petitioner, the same may be dealt with by the Local Body or by the Tahsildar concerned, as the case may be, by initiating appropriate proceedings in accordance with law.



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3.before conducting the survey, the Tahsildar concerned shall issue notice to the Petitioner as well as to the respondents 3 and 4.

4.the entire exercise shall be completed by the Tahsildar concerned within a period of six weeks from the date of request made by the third respondent for the survey.

No costs. Consequently, connected Miscellaneous Petitions are closed.

[S.S.S.R.,J.] [D.B.C,J.]
28.07.2023

Index:Yes/No

Internet:Yes/No

NCC:Yes/No

vsn

To

1.The District Collector,
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2.The Assistant Director of Town Panchayats,
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3. The Executive Officer,
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S.S.SUNDAR, J.

AND

D.BHARATHA CHAKRAVARTHY,J.

vsn

ORDER MADE IN

W.P(MD)NO.633 OF 2023

and

W.M.P(MD)Nos.631 and
634 of 2023

28.07.2023