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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **04.08.2023**

CORAM:

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

**CONT.P(MD)NO.178 OF 2023
and
W.P(MD)No. 12014 of 2023**

M.Rajakani :Petitioner/Petitioner

.VS.

1.Thangaiah,
The Tahsildar,
Sathankulam Taluk,
Thoothukudi District.

2.Rajesh,
The Block Development Officer,
Sathankulam,
Thoothukudi District. :Contemnors/Respondents 1 and 2

PRAYER: Contempt Petition filed under Section 11 of the Contempt of Courts Act praying this Court to punish the respondents for their wilful disobedience of the order of this Court made in W.P(MD)No. 12014 of 2021, dated 26.10.2022.

For Petitioner :Mr.Vigneshkumar

For Respondents :Mr.J.Ashok
1 and 2 Addl.Govt.Pleader



ORDER

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This Contempt Petition is filed praying this Court to punish the respondents for their wilful disobedience of the order of this Court made in W.P(MD)No.12014 of 2021, dated 26.10.2022.

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

3.The Petitioner earlier has filed W.P(MD)No.12014 of 2021 seeking for issuance of a Writ of Mandamus directing the respondents 1 and 2 to remove the encroachment done by the respondents 3 to 7 in the common way situate at S.No.95/1C1, Arasoor Village, Thoothukudi District, morefully, described in the schedule of property and to restore the Petitioner's and her family members free and peaceful access to the common way. This Court, disposed of the above Writ Petition, with a direction to the official respondents to proceed with the eviction proceedings, if the encroachers have not removed the encroachments on or before 11.11.2022. The above said order was passed based on the statement of the learned Special Government Pleader appearing for



the second respondent. Therefore already notice was issued to the encroachers to remove the encroachments on or before 11.11.2022. It was only on the basis of the statement made by the learned Special Government pleader, the direction was issued without even hearing the parties concerned.

4.The Petitioner, has filed the above Contempt Petition alleging that the order of this Court has not been complied with.

5.The Tahsildar has now sent a communication to the Government Pleader to the effect that the property in S.No.95/1C alleged to have been encroached to an extent of 0.00.35 sq.mtr and it is classified as "Grama Natham".It is also stated that as per the village records, the pathway is in existence on ground (Poosthuthu Pathai). It is only to enforce such pathway on ground as per the revenue records, the Petitioner has approached this Court for removal of encroachments. The Tahsildar concerned has also stated that the private respondents in the Writ Petition have filed a civil suit in O.S.No.67 of 2022 as against the revenue officials in respect of the same property and a written statement was also filed by the official respondents.



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6. Since this Court has not given any specific finding as regards the encroachment and the extent of encroachment, it is open to the Civil Court to decide the issue whether the private respondents are in encroachment of the public pathway and the Petitioner also can implead herself in the civil suit to establish her case, this Court is not inclined to precipitate the matter further by passing orders deciding the rights of the parties.

7. In that view of the matter, this Court is not inclined to further adjudicate this Contempt Petition and accordingly, the Contempt Petition is closed. It is open to the Petitioner to implead herself in the civil suit or file a separate civil suit so as to establish her independent right over the public pathway, in the manner known to law. No costs.

[S.S.S.R.,J.] [D.B.C.,J.]
04.08.2023

Index: Yes/No
Internet: Yes/No
NCC: Yes/No
vsn

To

1. Thangaiah,
The Tahsildar,
Sathankulam Taluk,



Thoothukudi District.

2. Rajesh,
The Block Development Officer,
Sathankulam,
Thoothukudi District.



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S.S.SUNDAR, J.

AND

D.BHARATHA CHAKRAVARTHY, J.

vsn

ORDER MADE IN

CONT.P(MD)NO.178 OF 2023

and

W.P(MD)No. 12014 of 2023

04.08.2023