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W.P.(MD)No.2063 of 2023



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 02.02.2023**

**CORAM:**

**THE HON'BLE MR.T.RAJA, THE ACTING CHIEF JUSTICE  
and  
THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR**

**W.P.(MD) No.2063 of 2023  
and  
W.M.P(MD)No.1845 of 2023**

K.Anthonyraj

... Petitioner

-VS-

1.The District Collector,  
Tirunelveli District,  
Collectorate,  
Tirunelveli.

2. The Tahsildhar,  
Ambasamudram Taluk,  
Ambasamudram,  
Tirunelveli District.

3. The Parish Priest,  
Sacred Heart Church,  
Iruthayakulam,  
Vickramasingapuram- 627425,  
Tirunelveli District.

... Respondents

**PRAYER:** Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 2<sup>nd</sup> respondent herein to take appropriate action as per G.O.Ms.No.540, Revenue LD6(2) Department, dated 04.12.2014 as against the encroachment made by the 3<sup>rd</sup> respondent in the Government



poramboke land in Survey No. 390 of Vickramasingapuram Part-1 Village, Ambasamudram Taluk, Tirunelveli District as requested by petitioner's representation dated 15.3.2022 within a reasonable time that may be stipulated by this Court.

For Petitioner : Mr.P.Subbiah  
For R1 & R2 : Mr.M.Sarangan  
Additional Government Pleader  
For R3 : Mr.Savarimuthu for  
St.Xavier Associates

### **ORDER**

**[Order of the Court was made by  
The Hon'ble The ACTING CHIEF JUSTICE]**

Mr.K.Anthonyraj S/o.Kulanthaisamy Thevar, has filed this writ petition for issuance of a Writ of Mandamus, directing the 2<sup>nd</sup> respondent herein, to take appropriate action as per G.O.Ms.No.540, Revenue LD6(2) Department, dated 04.12.2014, as against the encroachment made by the 3<sup>rd</sup> respondent in the Government poramboke land in Survey No.390 of Vickramasingapuram Part-1 Village, Ambasamudram Taluk, Tirunelveli District, as requested by him in his representation dated 15.03.2022, within a reasonable time.



2. When the matter was taken up for hearing, learned Additional Government Pleader appearing for the respondents 1 and 2 submitted that the prayer of the petitioner to remove the encroachment made by the 3<sup>rd</sup> respondent in the Government poramboke land in Survey No.390, cannot be entertained by this Court, as the land covered in Survey No.390 is a patta land of Roman Catholic Sabai as per Patta No.1641, dated 28.04.2015. In support of his submission, he has also produced the copy of the aforesaid patta.

3. Learned counsel for the petitioner has produced the copy of the judgment dated 06.12.2012 made in O.S.No.144/1998 filed by the plaintiffs namely, R.C Diocese of Palayamkottai, through its Procurator and Vicramasingapuram, Irudhayagulam R.C. Church, Rev.Father. Perusal of the aforesaid judgment shows that when a notice dated 18.06.1998 was issued calling upon the plaintiffs to remove the compound wall and gate which were allegedly put up encroaching the pathway running in S.Nos.389/3, 378/2b and 390, the same was sought to be declared as null and void and the learned Principal District Munsif, Ambasamudram, by judgment dated 06.12.2012, partly decreed the aforesaid suit, by



declaring the notice dated 18.06.1998 as null and void. The relevant portion of the said judgment is given as under:-

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*20. Admittedly the said notice dated 18.06.1998 was served at about 3.40 p.m. to the plaintiffs and in which the plaintiffs church was called upon to remove the encroachments before 5.00 p.m. on that date itself. Under section 7 of the Act 3/1905, specific time should be given to the parties concerned to show their causes for not to proceed against them. Without giving such an opportunity to the plaintiffs to produce their documents for not to proceed against them, the notice was issued specifying the time for removal of encroachments without giving any opportunity of hearing. Hence, Ex.A1 notice issued against the procedure of Section 7 of the Act 3/1905 and also against the natural justice. Hence the same is liable to be declared as null and void. Since the Ex.A1 notice itself is null and void, further action cannot be taken on the basis of the same. ....*

.....

In the result, the suit is partly decreed without cost by declaring that Ex.A1 notice dated 18.06.1998 is null and void along with the consequential relief of permanent injunction for not to take any further action on the basis of Ex.A1. ...."

4. Without even perusing the aforesaid judgment carefully and the Patta No.1641, dated 28.04.2015 issued in respect of Survey No.390 in favour of Roman Catholic Sabai, the petitioner



ought not to have come to this Court. The prayer in this writ petition is misconceived and therefore, the writ petition is liable to be dismissed.

5. Accordingly, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

**[T.R., A.C.J.] [D.K.K., J.]**  
**02.02.2023**

NCC : Yes / No  
Index : Yes / No  
Internet: Yes / No  
bala/ps

To

1.The District Collector,  
Tirunelveli District,  
Collectorate,  
Tirunelveli.

2. The Tahsildhar,  
Ambasamudram Taluk,  
Ambasamudram,  
Tirunelveli District.



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W.P.(MD)No.2063 of 2023:

**T.RAJA, A.C.J.**  
**and**  
**D.KRISHNAKUMAR, J.**

bala/ps

**ORDER MADE IN**  
**W.P.(MD) No.2063 of 2023**  
**DATED : 02.02.2023**