



W.P(MD)No.2365 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.08.2023

CORAM:

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

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S.Sathishkumar

... Petitioner

-VS-

1.The Commissioner,
Madurai City Corporation,
Anna Maligai,
Madurai.

2.Kasi

3.M.Palanikumar

4.T.Jaiganesh
(R2 is impleaded vide Court order dated
19.01.2023 by DKKJ & RVJ)
(R3 & R4 impleaded vide order dated
28.08.2023 made in W.M.P.(MD) No.
17162 of 2023 in W.P.(MD) No.2365 of
2022)

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondent to remove the encroachment, unauthorized constructions of additional temple blocking the public street and sound equipments installed in the "Arasamaram" tree in the public street, enable the residents to have free access of public street



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having 20 feet wide and peaceful living based on the petitioner's representation dated 19.10.2021.

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For Petitioner : Ms.T.Banumathy
For 1st Respondent : Mr.K.K.Kannan
Standing Counsel
For 2nd Respondent : Mr.Jagadesh Pandian
For Respondents 3 & 4 : Mr.T.Antony Arulraj

ORDER

[Order of the Court was made by S.S.SUNDAR, J.]

This Writ Petition is filed for issuance of Writ of Mandamus, directing the first respondent to remove the encroachment, unauthorized constructions of additional temple blocking the public street and sound equipment installed in the “Arasamaram” tree in the public street and enable the residents to have free access of public street having 20 feet width and peaceful living.

2. The case of the petitioner is that his house is situated on the Northern side of a Temple, which is known as “Arulmigu Vasantha Muthumariamman Temple”. It is the case of the petitioner that originally the Temple was just abutting the street known as A.V.P.Asaithambi Street. The width of street, according to the petitioner is 20 feet. It is also admitted by the petitioner that in the street, one “Arasamaram” is located on the one side of the street, but it is atleast 10 feet away from the existing Temple, which is abutting the same street.



3. The grievance of the petitioner is that the Temple has recently put up a construction encroaching the road. It is stated that atleast 10 feet of street have been encroached, thereby reduction of the width of the road from 20 feet to 10 feet. Stating that the right of access to the public, including the petitioner, is taken away by the additional constructions, the petitioner has filed the above Writ Petition for direction to the first respondent to remove the encroachment after following the procedures.

4. The person representing the Temple is impleaded as second respondent. Two other persons, namely, one M.Palanikumar and T.Jaiganesh, who are also residents of the same street, are also impleaded today by order of this Court in the petition filed by the said residents.

5. The fact that the Temple has been put up to house the deity, which is up to the middle of the street as seen from the photographs. It is not disputed by any of the contesting respondents that the Temple has been constructed by encroaching into the public street. Merely because a Temple is constructed, this Court, need not permit the encroachment, despite the sentiments of few individuals, who caused the construction and made others not to have a free access to the entire street. The public street is meant for the residents to have free access. The public street, which is meant for free access to every one, should serve the real purpose. For example when an



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Ambulance or Fire Fighting Vehicle has to be brought into the street it will be very difficult for the persons, who are involved in the rescue operations to have access to the street and access to the persons in need. Therefore, this Court is unable to accept the submissions of the learned counsel appearing for the private respondents, who are supporting the construction of the Temple. On the admitted facts, the Temple or the Additional Construction which is proposed is only going to be encroachment in the public street. A public street should be kept only for the free ingress and egress of public.

6. In view of the same, the Writ Petition is allowed and the first respondent is directed to proceed further in accordance with law. After following the procedures contemplated under Section 128 of the Tamil Nadu Urban Local Bodies Act, 1998, the first respondent shall remove the encroachment after providing opportunity of hearing to the petitioner and respondents 2 to 4. No costs.

[S.S.S.R, J.] [D.B.C., J.]
28.08.2023

Index : Yes / No
Neutral Citation : Yes / No
sj



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and
D.BHARATHA CHAKRAVARTHY, J.

sj

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