



W.P.(MD)No.4783 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.11.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD)No.4783 of 2021
and
W,M.P.(MD).No.3907 of 2021

Vijaya

Vs.

... Petitioner

- 1.The Executive Engineer,
Public Works Department
(Building Division Medical),
Cantonment,
Trichy,
Trichy District.
- 2.The Assistant Executive Engineer,
Public Works Department,
(Building Sub Division Medical),
Shanthaipattai Main Road,
(Opposite to Municipal Office),
Pudukkottai, Pudukkottai District.
- 3.The Assistant Engineer,
Public Works Department,
Building Section (Medical),
Opposite to Municipal Office,
Pudukkottai, Pudukkottai District.



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4.The Joint Director
Medical and Rural Health Service,
Pudukkottai, Pudukkottai District.

5.The Chief Medical Officer
Government Hospital,
Gandarvakkottai,
Pudukkottai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents to remove the compound wall constructed over natham survey no 353/4 (Old Natham Survey no. 188/2) at Gandarvakkottai, Kovilur Revenue Village, Gandarvakkottai Taluk, Pudukkotai District.

For Petitioner : Mr.D.Parisuthanathan

For R-1 to R-5 : Ms.D.Farjana Ghoushia,
Special Government Pleader

ORDER

This Writ Petition has been filed for the issue of writ of mandamus directing the respondents to remove the compound wall that was constructed over the Natham Survey No.353/4 (Old Natham Survey No. 188/2) at Kovilur Revenue Village, Gandarvakkottai Taluk, Pudukkotai District.



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2. When the matter came up for hearing on 12.10.2023, this

Court passed the following order:

“The grievance of the petitioner is that the property in S.No.353/4 is in possession and enjoyment of the petitioner and it is a natham land and that the Public Works Department has constructed a wall in the place, which is within S.No.353/4.

2.The learned Special Government Pleader, on oral instructions, submitted that the wall was constructed only over S.No.353/5. The learned Special Government Pleader also placed reliance upon the judgment and decree passed in O.S.No.60 of 2013, which was filed by the husband of the petitioner. According to the learned Special Government Pleader, this suit pertaining to the very same subject property.

3.The third respondent is directed to file an affidavit in this Writ Petition in order to enable this Court to pass final orders in this Writ Petition.

4.Post this case next week.”



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3. Pursuant to the above order, an affidavit has been filed by the Executive Engineer, Public Works Department and the relevant portions are extracted hereunder:

“I submit that the petitioner Tmt.Vijaya W/o Muthuvembu purchased the following Two Nos of House Plots in Natham Survey No: 188/2 (Part) (New Survey No 353/4 (Part)) from A.Vasudevan through registered sale deed 237/1999 date: 15.03.1999 in Sub register office Gandarvakottai. This deed is registered based on final verdict of district munsif court Pudukkottai civil case No 1102/93 which is mentioned in registered deed.

The purchased land Details. (as per deed)

House Plot No: 1

Natham S.No: 188/2 (Pt) (New S.No : 353/4 (Pt))

East to West 5 Feet both sides and South to North 55 Feet both sides Area = 275 Sq.Ft.

Plot Boundary

North side Thanjavur - Gandharvakottai Road

South side Govt. Hospital

West side Jothi Cycle company

East side Govt. Hospital



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House Plot No: 2

*Plot in Survey No: 188/2 (Pt)- New Survey No:
353/4 (Pt)*

*East to West 11 Feet both sides and South to North
14 Feet both sides Area = 154 sq.ft*

Plot Boundary

North side Jothi Cycle company

South side Govt. Hospital

West side Maruthamuthu Kondaiyar Home

East side House Plot No 1 above

*Total purchased vacant plot is 429 Sq.Ft
(Plot no 1=275 sq.ft. + Plot no 2 154 sq.ft) After
purchasing the petitioner constructing temporary
steel sheeted shed building measuring 11 feet x 14
feet in her purchased plot 2 and the purchased
plot 1 is utilized for approach pathway to her
temporary house from road.*

*I submit that the construction of compound
wall in western side of GH total length of 55' feet
adjoining the petitioner's purchased plot no 1 and
petitioner using this plot 1 as approach pathway
to her temporary house. construed in plot no 2.
(Photo copy attached)*



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I submit that the compound wall in west side boundary of Govt. Hospital, Gandharavakottai was constructed by the then Executive Engineer. PWD., Buildings C&M Division, Medical Works, Trichy after due verification of the boundary by a surveyor concerned. The work had been started by 13.02.2021 and completed by 07.03.2021.

Now, as per the instruction of Govt. pleader PWD, Madurai Bench, The dispute site was inspected on 06.11.2023 by me, the Executive Engineer, PWD., Buildings (C&M) Division, Pudukkottai, the Assistant Executive Engineer, PWD., Buildings (C&M) Sub Division, Pudukkottai, the Assistant Engineer, PWD., Buildings (C&M) Section, Thirumayam, and 5th respondent with Surveyor Gandharvakottai. The Surveyor measured the dispute land in survey no: 353/4 (Old S.No: 188/2) and the report submitted with FM sketch drawing to the Hon'ble Court (Copy enclosed).

I submit that the surveyor has given report that The petitioner constructed temporary shed house in the 2nd plot (Property) of the petitioner



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(11' x 14' 154 Sq. ft) and full area has been utilized. She used The 1st plot (property) (5' x 55' = 275 sq.ft) as pathway approach from road to her house. The measurement South to East is 55' exactly and East to West 6' on south side and 3' 4" feet on north side instead of 5' on both sides. Hence as per Surveyor report she is using 55' x ((6'+3'4")/2)= 257 sq.ft. instead of she purchased 275 sq.ft. Just only 18 sq.ft short (Shows in sketch attached).

I submit that as per the Surveyor report, the compound wall constructed in western side of Government Hospital, Gandharvakottai, is along the boundary line of Government Hospital campus. The boundary of Hospital on Western Side is protected by compound wall which is essential for the safety to the public using Hospital."

4. Heard the learned counsel on either side.

5. On carefully going through the materials placed before this

Court and also a stand taken by the first respondent, it is seen that as per



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the measurement of the Surveyor and the report submitted by him, the petitioner is utilizing 257 Square Feet as against the extent purchased to the tune of 275 Square Feet. Therefore, even as per the stand taken by the first respondent, there is an encroachment to the tune of 18 Square feet.

6. There is already an existing dispute between the petitioner and the Public Works Department pending before the competent Civil Court and the case before the trial Court ended against the husband of the petitioner and as against the same, the petitioner filed an appeal before the Sub Court, Pudukottai and it is pending in A.S.No.05 of 2020. This suit pertained to a septic tank that is said to have been put up by the Public Works Department in the property belonging to the petitioner's husband. If ultimately, the petitioner succeeds in the pending appeal, the compound wall that has now been put up in the property will also amount to an encroachment upon the property of the petitioner. However, it all depends upon the final result in the appeal. Therefore, it is left open to the petitioner to prosecute the pending appeal before the concerned Civil Court and subject to the result of the appeal, the petitioner is directed to work out her remedy. Since the petitioner is prosecuting the appeal before the Sub



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Court, even though it is admitted that 18 Square Feet has been encroached upon by the Public Works Department, for the present, the petitioner is not claiming for any compensation, since that may be put against the petitioner in the pending appeal. Therefore, the petitioner reserves her rights and depending upon the final result in the appeal, the petitioner will work out her remedy in accordance with law.

7. This Writ Petition is disposed of in the above terms. No costs. Consequently, the connected miscellaneous petition is closed.

27.11.2023

NCC:yes/no

Index:yes/no

Internet:yes/no

tsg

To

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Public Works Department
(Building Division Medical),
Cantonment,
Trichy,
Trichy District.

2.The Assistant Executive Engineer,
Public Works Department,
(Building Sub Division Medical),
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(Opposite to Municipal Office),
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N.ANAND VENKATESH, J

tsg

3.The Assistant Engineer,
Public Works Department,
Building Section (Medical),
Opposite to Municipal Office,
Pudukkottai, Pudukkottai District.

4.The Joint Director
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