



W.P.(MD) No.3496 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.3496 of 2023

and

W.M.P.(MD)No.3230 of 2023

P.Rengasamy

... Petitioner

-Vs-

1.The District Collector,
Tiruchirappalli District.

2.The Tahsildar,
Musiri Taluk, Musiri,
Tiruchirappalli District.

3.The Revenue Inspector,
Pulivalam Section, Musiri Taluk,
Tiruchirappalli District.

... Respondents

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PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records pertaining to the impugned order passed by the 3rd respondent dated 07.02.2023 and quash the same on the ground that the same is arbitrary, illegal and without any legal basis.

For Petitioner : Mr.K.Prakash

For Respondents : Mr.V.Nirmal Kumar,
Government Advocate

ORDER

[Order of the Court was made by D.KRISHNAKUMAR, J.]

The show cause notice dated 07.02.2023 issued by the 3rd respondent, is under challenge in this Writ Petition.

2.Mr.V.Nirmal Kumar, learned Government Advocate takes notice on behalf of the respondents. By consent of both parties, this Writ Petition is taken up for final disposal at the stage of admission itself.

3.According to the petitioner, the property in Survey No.845/35 to an extent of 903 sq.ft, Pulivalam Village, Musiri Taluk, Tiruchirapalli District, belongs to the petitioner and the land in Survey No.845/34 situated on the

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southern side of the petitioner's property, is classified as pathway. Since the 2nd respondent disturbed the possession of the petitioner in Survey No.845/35, he filed a Civil Suit in O.S.No.239/2022, seeking permanent injunction on the file of the learned Principal District Munsif, Thuraiyur and the same is still pending. In the meantime, the adjacent land owners encroached the pathway in question. Therefore, the petitioner filed W.P.(MD)No.25429 of 2022 before this Court, seeking removal of the encroachment and the same was disposed of, by an order dated 09.11.2022, directing the official respondents to consider the representation of the petitioner dated 06.11.2022 and to remove the encroachment by following due process of law. Pursuant to the said order, the 2nd respondent issued a notice dated 30.12.2022 to survey the pathway in question on 05.01.2023. However, without conducting survey, the present impugned notice dated 07.02.2023 is issued by the 3rd respondent, directing the petitioner to remove the encroachment made in the pathway in question. According to the petitioner, he has not encroached the pathway in question and he constructed the house only in Survey No.845/35, which belongs to him. Therefore, the petitioner is before this Court with the aforesaid prayer.

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4.The learned Government Advocate appearing for the respondents submitted that the impugned show cause notice is issued by the 3rd respondent, directing the petitioner to give his explanation on or before 21.02.2023, however, without giving explanation, the petitioner has filed this Writ Petition.

5.We are in agreement with the submission made by the learned Government Advocate that the petitioner instead of giving his explanation to the impugned show cause notice, filed this Writ Petition. If the petitioner is having any material to substantiate that he has not encroached the pathway in question, he has to place the same before the authority concerned by way of explanation. Therefore, the petitioner is directed to submit his explanation to the impugned show cause notice dated 07.02.2023 before the 2nd respondent within a period of two weeks from the date of receipt of a copy of this order. On receipt of such objection / explanation, the 2nd respondent is directed to consider the same and pass appropriate orders on merits and in accordance with law, within a period of four weeks thereafter and if there is any encroachment in the pathway in question, the same would be removed, after affording sufficient opportunity to all the parties concerned and by following due process of law.

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6.With the above direction, this Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

[D.K.K., J.] & [L.V.G., J.]
22.02.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
MYR

To

1.The District Collector,
Tiruchirappalli District.

2.The Tahsildar,
Musiri Taluk, Musiri,
Tiruchirappalli District.

3.The Revenue Inspector,
Pulivalam Section, Musiri Taluk,
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AND
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