



W.P.(MD) No.8373 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 07.08.2023

CORAM:

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

**W.P.(MD) No.8373 of 2023
and
W.M.P.(MD)Nos.7712 and 11489 of 2023**

K.Rajapandian

: Petitioner

-vs-

1.The Commissioner,
Thoothukudi Corporation,
Thoothukudi.

2.The Executive Engineer,
Thoothukudi Corporation,
Thoothukudi.

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, forbearing the respondents from putting up the construction of the public latrine encroaching into the private property bearing T.S.No.1355/1A and 1363 situated in Auvdaiyarpuram, Thoothukudi District by considering the petitioner's representation dated 20.03.2023.

For Petitioner : Mr.G.Prabhu Rajadurai



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For Respondents : Mr.Veerakathiravan
Additional Advocate General
Assisted by
Mr.N.Anandakumar

: Mr.S.M.Ananda Murugan
Owner of the property

ORDER

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

This Writ Petition is filed for issuance of Writ of Mandamus, to forbear the respondents from putting up the construction of the public latrine encroaching into the private property bearing T.S.Nos. 1355/1A and 1363 in Auvdaiyarpuram, Thoothukudi District.

2. It is case of the petitioner that the property in T.S.Nos. 1355/1A and 1363 measuring to an extent of 1.18 acres is the property of one Sivagami Thaimammal and the said land is situated within the jurisdiction of Thoothukudi Municipal Corporation. Stating that the original owner abandoned the property about 75 years ago, the petitioner has come forward with the above writ petition alleging that the local body is trying to construct a public toilet. Since the grievance of the petitioner is that the petitioner has a residence adjoining this property, where the public toilet has been put up by the local body. It is also stated that the petitioner filed a civil suit in



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O.S.No.185 of 2018 before the learned District Munsif Court, Thoothukudi for injunction against the private persons who had rival claim in respect of the same property. Stating that the petitioner has obtained a decree against such individuals who tried to encroach the suit property, the petitioner further stated that the petitioner's right of possession is affected by the construction proposed by the local body.

3. This Court is unable to appreciate any of the contentions of the petitioner. The petitioner has not produced any records to show the possession of the property. The petitioner admits ownership in favour of a private individual, by name, Sivakasi Thaiammal. Therefore, the petitioner may not succeed and establish adverse possession even against the private owner. The respondents have put up no construction. It is the case of the respondents that they have constructed the toilet only in S.No.1379/2, Bala Vinnayagar Kovil Street, which belongs to the local body. It is also stated that the location of public toilet is the ideal place which is meant for the public at large and the petitioner's claim which is unsupportable by any documents, is liable to be rejected. Though this Court is not going to decide the title or right, this Court sees no document in favour of the petitioner who claims ownership or physical possession over the



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property. The petitioner who has filed a civil suit against the third party cannot rely upon the said judgment to claim ownership as against the local body. Since the toilet has now been constructed and the stage of construction is almost completed, the further construction is stalled by virtue of interim order passed by this Court.

4. In view of the above, this Court finds no merit in this petition and accordingly, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

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

07.08.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

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Thoothukudi Corporation,
Thoothukudi.
- 2.The Executive Engineer,
Thoothukudi Corporation,
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