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W.P.(MD) No.8830 of 2023

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

**DATED : 17.10.2023**

**CORAM:**

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM  
and  
THE HONOURABLE MRS.JUSTICE S.SRIMATHY**

**W.P.(MD) No.8830 of 2023  
and  
W.M.P.(MD) No.8059 of 2023**

Rubavathi

... Petitioner

-VS-

1.The District Collector  
Madurai District  
Madurai

2.The Thasildhar  
Madurai West Taluk  
Madurai

3.The Commissioner  
Madurai Corporation  
Madurai

4.The Assistant Commissioner  
Zone-4 (South)  
Madurai Corporation  
Madurai

5.Sutha

... Respondents



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**PRAYER:** Petition filed under Article 226 of the Constitution of India, to issue a writ of mandamus directing the respondents not to initiate eviction process in the T.S.No.605, situated at Town Survey Ward 8, Block-7, Thasildhar Pallivasal Street, Melmadurai Village, Madurai Corporation, Madurai West Taluk, Madurai District, till disposal of suit in O.S.No.590 of 2023, pending on the file of the Principal Sub Judge, Madurai.

For Petitioner : Mr.R.Aravind Raj

For Respondents : Mr.S.Shanmugavel  
Additional Government Pleader for R1 & R2  
Mr.S.Vinayak  
Standing Counsel for R3 & R4  
Ms.B.Bhuvaneshvari for R5

**ORDER**

**[Order of the Court was made by S.M.SUBRAMANIAM, J.]**

The writ on hand has been instituted to direct the respondents not to initiate eviction process in T.S.No.605, situated at Town Survey Ward-8, Block-7, Thasildhar Pallivasal Street, Melmadurai Village, Madurai Corporation, Madurai West Taluk, Madurai District, till the disposal of the suit in O.S.No.590 of 2023, pending on the file of the Principal Sub Court, Madurai.



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**2.** The petitioner states that she inherited the property from her husband Late.Murugan. The fifth respondent purchased a portion of the property from the husband of the petitioner and constructed a house therein. On account of encroachment by the family members of the petitioner in the Corporation Lane, the fifth respondent is unable get drainage and drinking water facilities. The Madurai Corporation is unable to lay pipes for the purpose of providing drainage and water service connection the fifth respondent's house. Thus, the fifth respondent is not in a position to occupy the house, despite the fact that she had constructed a house by investing huge money.

**3.** It is not in dispute between the parties that the fifth respondent earlier filed W.P.(MD) No.2427 of 2022 seeking a direction to the Commissioner of Madurai Corporation to remove the encroachment made by the husband of the petitioner herein in the common pathway. The Division Bench of this Court considered the facts in entirety and passed an order on 18.07.2022 directing the Commissioner of Madurai Corporation to initiate proceedings to remove the encroachment in the common pathway. While



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disposing of the said writ petition, the Division Bench of this Court has also taken into consideration the earlier civil suit instituted between the parties and the Judgment and Decree passed in O.S.No.588 of 2012, by the learned Additional District Munsif, Madurai Town.

**4.** Learned Standing Counsel appearing for the respondent – Madurai Corporation, on instructions, made a submission that the Authorities concerned have conducted a survey and identified the encroached portion of the common pathway belonging to the Madurai Corporation. Final order has also been passed on 04.03.2023 by the fourth respondent / Assistant Commissioner stating that the petitioner and her family members have encroached upon the land belonging to the Madurai Corporation, thereby preventing the Authorities to provide drainage and water facilities to the premises of the fifth respondent. Admittedly, the said order dated 04.03.2023 passed by the fourth respondent has not been challenged so far.

**5.** That being the factum, the petitioner, who is the wife of Late.Murugan / third respondent in W.P.(MD) No.2427 of 2022, who was alleged to have made encroachment in the common pathway, has filed this



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writ petition seeking a direction to the respondents not to initiate eviction process.

**6.** Without challenging the order, dated 04.03.2023, passed by the Assistant Commissioner, Madurai Corporation, the relief of mandamus as such sought for is not entertainable. More so, the earlier Division Bench of this Court has considered the issues between the very same parties in W.P. (MD) No.2427 of 2022 and issued a direction to the Commissioner, Madurai Corporation to remove the encroachment made in the common pathway belonging to the Corporation so as to provide basic amenities to the residences of that locality, including the fifth respondent's premises. While implementing the order passed by this Court, the Corporation officials were prevented from removing the encroachment and thereafter, police protection was also sought for and the present writ petition came to be filed for a direction not to initiate eviction process.

**7.** In view of the fact that the encroached portion has already been identified by the competent authorities of the Madurai Corporation and an order has been passed by the authority concerned to remove the



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encroachment, which remains unchallenged till date, there is no reason to consider the relief as such sought for in this writ petition.

**8.** Accordingly, the writ petition is dismissed. Insofar as the suit in O.S.No.590 of 2023, filed by the petitioner herein, on the file of the Principal Sub Court, Madurai, which was filed subsequent to the order of this Court in W.P.(MD) No.2427 of 2022, is concerned, it is for the petitioner to pursue her remedy and establish her civil rights in the manner known to law. No costs. Consequently, connected miscellaneous petition is closed.

**[S.M.S., J.]**

**[S.S.Y., J.]**

**17.10.2023**

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NCC : Yes / No

Index : Yes / No

Internet : Yes / No

**Note to Office:**

Issue order copy by 18.10.2023.

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To:

- 1.The Principal Sub Judge,  
Madurai.
- 2.The District Collector,  
Madurai District,  
Madurai.
- 3.The Thasildhar,  
Madurai West Taluk,  
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**S.M.SUBRAMANIAM, J.**  
**and**  
**S.SRIMATHY, J.**

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(1/2)