



W.P.(MD)No.14238 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 18.07.2023

CORAM

THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**

and

THE HONOURABLE **MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.P(MD)No.14238 of 2023

and W.M.P. (MD) No.12052 of 2023

Irulandi

... Petitioner

Vs.

1.The Commissioner,
Madurai Corporation,
Madurai – 625 002.

2.The Assistant Commissioner,
Zone No.5 (West),
Madurai Corporation,
Thirupparankundram,
Madurai.

3.A.K.Baskar

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, to call for the records pertaining to the Impugned order passed by the 2nd respondent vide his Proceedings Nil, dated 22.05.2023 and quash the same as illegal.

For Petitioner

: Mr.C.Mayilvahana Rajendran



W.P.(MD)No.14238 of 2023

For Respondents 1 & 2 : Mr.S.Vinayak

For 3rd Respondent : No appearance

ORDER

(Order of the Court was made by **S.S.SUNDAR, J.**)

The Writ Petition is filed challenging the impugned order dated 22.05.2023 purported to have been passed by the second respondent under Sections 236, 256, 257, 258, 471, 472, 473 and 503 of Madurai City Municipal Corporation Act.

2. The case of the petitioner is that his father purchased the land in S.No.316, Avaniyapuram Village, Madurai District, and he was in possession and enjoyment of the property by constructing a house in the year 1965. Referring to the fact that the petitioner's father obtained electricity connection and water connection to the house, the petitioner has stated that the petitioner is the absolute owner of the property paying property tax and other statutory dues in respect of the house.

3. It is the further case of the petitioner that the third respondent, who is the purchaser of another plot in the year 1986, is



W.P.(MD)No.14238 of 2023

trying to encroach the pathway and that at his instance, the respondents 1 and 2 have initiated action for removal of encroachment against the petitioner as if the petitioner is in encroachment of the land, which is part of a public road. Though the petitioner has challenged the impugned order dated 22.05.2023 on many grounds, the learned counsel for the petitioner submitted that the respondents 1 and 2 have never conducted any survey to fix the boundary or to identify any encroachment in the presence of the petitioner.

4. Despite notice has been served on the third respondent and his name appears in the cause list, there is no representation for him either in person or through a counsel.

5. The impugned order does not refer to any survey or demarcation of boundary in the presence of the petitioner. The allegation in the notice is that the petitioner has put up a construction in the common passage. Unless the survey is conducted after issuing notice and in the presence of the petitioner, this Court is unable to conclude that the petitioner is in encroachment of a specific portion of a common passage.



W.P.(MD)No.14238 of 2023

The property has been classified as natham property.

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6. In the absence of revenue records to show that it is the common passage and survey or demarcation was not done in the presence of the petitioner, the respondents 1 and 2 cannot presume that the petitioner is in encroachment for the purpose of initiating the eviction proceedings which are summary in nature. In that view of the matter, this Court is unable to sustain the order, which does not refer to any show cause notice. Therefore, the impugned order is liable to be quashed. Accordingly, the Writ Petition is allowed and the impugned order dated 22.05.2023 is quashed.

7. The second respondent is directed to approach the Tahsildar concerned for the purpose of demarcation or identification of any encroachment in public pathway as alleged. The Tahsildar, who is asked to conduct survey shall issue notice to the petitioner as well as the third respondent before conducting survey. After survey being done, the report drawn on the result of the survey be served on the petitioner as well as the third respondent. In case, the petitioner is found to be an



W.P.(MD)No.14238 of 2023

encroacher, it may be open to the second respondent to proceed under Section 258 and 472 of Madurai City Municipal Corporation Act or any other Act.

No costs. Consequently, connected Writ Miscellaneous Petition is closed.

[S.S.S.R., J.] [D.B.C., J.]
18.07.2023

NCC : Yes / No
Index : Yes / No
sj



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W.P.(MD)No.14238 of 2023

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W.P(MD)No.14238 of 2023

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