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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:**01.09.2023**

CORAM:

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

W.P(MD)NO.17231 of 2022

Poun Guru

:Petitioner

.VS.

- 1.The District Collector,
Theni District,
Theni.
- 2.The Tahsildar,
Uthamapalayam Taluk,
Theni District.
- 3.The Executive Officer,
Thevaram Town Panchayat,
Thevaram,
Theni District.
- 4.Rajkumar

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the respondents 1 to 3 to remove the encroachments made by the fourth respondent and to clear the other encroachments on the common pathway comprised in S.No.921, situated at DKV School Street, Thevaram, Uthamapalayam, Theni District, by considering the Petitioner's representation, dated 08.07.2022.



For Petitioner :Mr.A.Arputharaj
For Respondents :Mr.J.K.Jayaseelan
1 to 3 Govt.Advocate
For Respondent-4 :Mr.R.Rajamohan

ORDER

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

This Writ Petition is filed seeking issuance of a Writ of Mandamus directing the respondents 1 to 3 to remove the encroachment made by the fourth respondent on the pathway comprised in S.No. 921, situated at DKV School Street, Thevaram, Uthamapalayam, Theni District.

2.Heard the learned counsel appearing on either side and perused the materials placed before this Court.

3.The Petitioner is a resident of Thevaram Village. It is his case that the property in S.No.921 is a land which is classified as "Natham". While the Petitioner is on the western side of the fourth respondent house, there exists a lane in between the two houses. The Petitioner's specific case is that the fourth respondent has encroached into the lane. The Petitioner has produced before this



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Court the photograph which shows that there is a projection by constructing steps leading to the first floor of the house put up by the fourth respondent. The further case of the Petitioner is that the projected portion by constructing steps is the encroachment by contending that the fourth respondent has not constructed the steps as per the building alignment. This statement of the Petitioner is stoutly denied by the fourth respondent. It is now admitted that the fourth respondent has put up the construction by extending the whole building upto the alignment of the steps which had been demolished and reconstructed by the fourth respondent. The fourth respondent has produced before this Court the sale deed standing in the name of the wife of the fourth respondent. This sale deed is dated 13.2.2002. As per the sale deed, it appears that the Petitioner has purchased the property measuring 31 feet east-west x 15 ft south north. Out of the total extent of 465 sq.ft stated to be conveyed in the sale deed, the building constructed originally by the predecessor of the fourth respondent appears to be occupying 31 x 11 feet. Therefore, it is clear from the document that the fourth respondent has purchased the plot which is with a width of 15 feet east-west.



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4.It is in the said circumstances, there is serious dispute with regard to the title. When the Petitioner states that fourth respondent has encroached into the lane, the fourth respondent claims ownership to the entire extent of 31' x 15' so that the construction of the house by the fourth respondent, which exist as on date, falls within the property as per the document. Since there are disputed questions of fact involved in this case, this Court is unable to decide the same in the Writ jurisdiction filed under Article 226 of the Constitution of India.

5.Therefore, leaving it open to the Petitioner or the fourth respondent to establish his rights by approaching the competent Civil Court, this Writ Petition is closed. No costs.

[S.S.S.R.,J.] [D.B.C,J.]
01.09.2023

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

vsn

To

1.The District Collector,
Theni District,

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Theni.

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S.S.SUNDAR, J.

AND

D.BHARATHA CHAKRAVARTHY, J.

vsn

ORDER MADE IN

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