



W.P(MD)No.16141 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.07.2023

CORAM:

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

**W.P(MD)No.16141 of 2023
and
W.M.P(MD)No.13531 of 2023**

M.Mariyammal

... Petitioner

Vs.

- 1.The District Collector,
Virudhunagar District,
Virudhunagar.
- 2.The Revenue Divisional Officer,
Aruppukottai,
Virudhunagar.
- 3.The Tahsildar,
Thiruchuli Taluk,
Virudhunagar District.
- 4.The Block Development Officer,
Village Panchath,
Narikuty,
Thiruchuli Taluk,
Virudhunagar District.
- 5.The President,
Naththakulam Panchayat,
Thiruchuli Taluk,
Virudhunagar District.



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6.P.Boomayil
7.M.Mariyammal

... 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 5 herein to remove the encroachment made by the respondents 6 and 7 in Survey No.175/1 of Nathakulam Village of Thiruchuli Taluk, Virudhunagar District that classified as of Public Path and restore the same as per revenue records within a time as may be fixed by this Court.

For Petitioner	:Mr.Aayiram K.Selvakumar
For R-1 to R-3	:Mr.D.Sachikumar, Additional Government Pleader
For R-4 & R-5	:Mr.T.Villavankothai, Additional Government Pleader

ORDER

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

The petitioner has come forward with this writ petition seeking for issuance of a Writ of Mandamus, directing the respondents 1 to 5, to remove the encroachment made by the respondents 6 and 7 in Survey No.175/1 of Nathakulam Village of Thiruchuli Taluk, Virudhunagar District which is classified as of Public Pathway and restore the same as per revenue records within a stipulated period.



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2. Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for respondents 1 to 5.

3. Since no adverse order is passed against respondents 6 and 7, notice to them is dispensed with.

4. The official respondents admitted that there is encroachment and intimation had already been given to the encroachers.

5. In view of the same, the third respondent is expected to take action to remove the encroachment if any, after hearing the respondents 6 and 7 and the encroachment shall be removed within a period of thirty days after hearing the parties.

6. We expect a survey to be conducted apart from taking photographs and video in the presence of parties. If required, police assistance can also be taken. If encroachment is found, no indulgence shall be shown to the encroachers. The dictum of the Hon'ble Apex Court as followed by this Court in W.P(MD)No.15636 of 2023, dated 03.07.2023, needs to be adhered to. Relevant portion of the said order reads as follows:



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“6. The Authorities concerned can also utilize the advanced technology of drone survey in the presence of the respective parties in order to ascertain the exact portion of encroachment. It is needless to mention that if any encroachment is found to be made, the electricity connection with respect to the encroachment shall have to be disconnected and the eighth respondent shall issue suitable direction to the concerned Assistant Engineer to that effect, in the light of the Judgment of the Division Bench in the case of **"P.Selvarajan Vs. The Commissioner of Municipal Administration, Chennai and others"** (W.P.No. 21639 of 2017), decided on **13.02.2018**, wherein the Division Bench observed as follows, in consonance with the order of the Supreme Court dated 05.01.2018 passed in a Petition for Special Leave to Appeal (C) No.33863 of 2017:

“3. Learned counsel appearing for the fourth respondent submitted that the fourth respondent has made an application for regularisation and that during the pendency of the proceedings, this Court, by order dated 11.09.2017, directed disconnection of electricity in respect of basement, second and third floors of the fourth respondent's



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premises, against which, the matter was taken up to the Supreme Court. The Supreme Court, in Petition for Special Leave to Appeal (C).No.26509 of 2017, by order dated 13.10.2017, did not interfere with the said order of this Court dated 11.09.2017, and permitted the fourth respondent herein to move the High Court. During the pendency of this Writ Petition, the fourth respondent herein has filed W.M.P.No.30495 of 2017 seeking direction to the TANGEDCO to restore the electricity connection to the building of the fourth respondent. **This Court, by order dated 07.11.2017, rejected the restoration of electricity supply. Thereafter, once again the matter was taken up to the Supreme Court by the fourth respondent, and the Supreme Court, by order dated 05.01.2018 in Petition for Special Leave to Appeal (C) No.33863 of 2017, has dismissed the Special Leave Petition, by observing as follows:**

"Heard learned counsel for the petitioner and perused the impugned order dated 07.11.2017 passed in WMP.No.30495/2017 passed by the Madras High Court.

We are not inclined to interfere in the impugned order and accordingly, the Special Leave Petition is dismissed.

However, we direct the authority concerned before whom the application for regularisation under the DTCP Building Regularisation Scheme 2017 is pending to decide the matter in accordance with



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law within two months.

Pending application stands disposed of."

7. It is made clear that if there is any encroachment made, no indulgence shall be shown. The officials shall follow the dictums of this Court (S.K.Kaul,C.J., and R.Mahadevan,J.) in Contempt Petition No.1769 of 2015 and Contempt Petition No.2166 of 2015 (Suo motu) and in W.P. No. 28143 of 2021 dated 27.01.2022 (S.Vaidyanathan,J and D. Bharatha Chakravarthy,J.) in its letter and spirit. If the officials fail to remove the encroachment, disciplinary action shall be initiated and punishment for major misconduct shall be entered in the service records that will deprive them of further chances of promotion."

7. We make it clear that we have not rendered any finding on the merits of the plea made by the petitioner and it is for the authority concerned to consider the petitioner's case.

8. With the above direction, this writ petition is disposed of. No Costs. Consequently, connected Miscellaneous Petition is closed.



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[S.V.N.,J.] [D.B.C.,J.]
05.07.2023

Index:Yes/No

NCC:Yes/No

PM

To:

- 1.The District Collector,
Virudhunagar District,
Virudhunagar.
- 2.The Revenue Divisional Officer,
Aruppukottai,
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- 3.The Tahsildar,
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- 4.The Block Development Officer,
Village Panchath,
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Thiruchuli Taluk,



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Virudhunagar District.

5. The President,
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S.VAIDYANATHAN, J.

AND

D.BHARATHA CHAKRAVARTHY, J.

PM



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ORDER MADE IN
W.P(MD)No.16141 of 2023

05.07.2023