



W.P(MD)No.16215 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 05.07.2023

CORAM:

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

W.P(MD)No.16215 of 2023

R.K.Kumar

... Petitioner

Vs.

- 1.The Assistant Director and Personal Assistant to
District Collector (Land Survey),
District Land Survey Office,
Madurai.
- 2.The Joint Director cum Director of Planning,
District Rural Development Departments,
Madurai District.
- 3.The District Land cum Inspector of Land Surveyor,
Madurai,
Madurai District.
- 4.The Block Development Officer,
(Village Panchayat),
Panchayat Union Office,
Thriupparankundram,
Madurai.
- 5.The Tahsildar,
Madurai West Taluk,
Madurai.



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6.The Firka Surveyor,
Madurai West,
Nagamalai Pudukottai,
Madurai – 625 019.

... 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 to measure and remove the encroachment and to lay road for public use pathway as per recommendation of the fifth respondent bearing in Old Survey No.78/2 in New Survey No.398/14, situated at Villacherry Village, Nagamalai Pudukottai, Madurai West Taluk, Madurai District, based on the petitioner's representation dated 18.08.2021.

For Petitioner
For Respondents

:Mr.P.R.Boomee Rajan
:Mr.M.Lingadurai,
Special Government Pleader

ORDER

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

The petitioner has filed this Public Interest Litigation seeking for issuance of a Writ of Mandamus directing the respondents to measure and remove the encroachment and to lay a road for public use as per recommendation of the fifth respondent bearing in Old Survey No.78/2 in New Survey No.398/14, situated at Villacherry Village, Nagamalai Pudukottai, Madurai West Taluk, Madurai District, based on the petitioner's representation dated 18.08.2021.



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2. The learned counsel for the petitioner would submit that there is encroachment in Old Survey No.78/2 mentioned in the prayer and that, the petitioner has made a representation on 18.08.2021 to remove the encroachment. However, the same has not been considered so far.

3. The learned counsel for the petitioner across the bar represents that several persons have encroached the public pathway. However, none of the persons, who are said to have encroached the road, is impleaded as a party in this writ petition. This Court cannot conduct a roving enquiry. More so, in the absence of parties, who are said to have encroached the public pathway, this Court cannot grant relief as sought for by the petitioner.

4. However, the Adangal Records produced by the petitioner in the typed set of papers would clearly show that New Survey No.398/14 mentioned in the prayer is a pathway.

5. The respondents 5 and 6 are expected to conduct a survey apart from taking photographs and video in the present of parties. If required, police assistance can also be taken. If encroachment is found, no indulgence shall be shown to the encroachers and the pathway shall be restored as found in the



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revenue records. Such exercise shall be completed within a period of two months from the date of receipt of a copy of this order.

6. While doing such exercise, the dictum of the Hon'ble Apex Court as followed by this Court in W.P(MD)No.15636 of 2023, dated 05.07.2023, needs to be adhered to. Relevant portion of the said order reads as follows:

“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. With the above direction, this writ petition is disposed of. No Costs.

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

Index: Yes/No
NCC: Yes/No



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S.VAIDYANATHAN, J.

AND

D.BHARATHA CHAKRAVARTHY, J.

PM

ORDER MADE IN

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