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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **28.07.2023**

CORAM:

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

**W.P(MD)NO.19492 OF 2021
and
W.M.P(MD)No.16194 of 2021**

R.Santhi

:Petitioner

.VS.

1.The District Collector,
Office of the District Collector,
Madurai District,
Madurai.

2.The Commissioner,
Melur Municipality,
Melur,
Madurai District.

3.The Tahsildar,
Melur Town,
Madurai District.

4.C.Alagammal

(R4 impleaded as per order of this Court made in
W.M.P(MD)No.923 of 2023 in W.P(MD)No.19492 of
2021, dated 17.7.2023.)

: Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the respondents not to initiate eviction process in the residential house



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in Town Ward C, Block No.18, Town Survey No.16, situated at Melur, Madurai District, Melur Town, Madureai District, without following the due process of law as contemplated by considering the Petitioner's representation, dated 14.09.2021.

For Petitioner	:Mr.R.Aravind Raj
For Respondents 1 and 3	:Mr.M.Lingadurai Special Govt.Pleader
For Respondent-2	:Mr.J.Gunaseelan Muthiah
For Respondent-4	:Mr.K.Mahendran

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 not to initiate eviction process in the residential house in Town Ward C, Block No.18, Town Survey No.16, situated at Melur, Madurai District, Melur Town, Madureai District, without following the due process of law as contemplated by considering the Petitioner's representation, dated 14.09.2021.

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



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3.The Petitioner is having a residential house in Town Survey No.16, situated at Melur, Madurai District. It is the case of the Petitioner that the property in T.S.No.16 is his ancestral property and that patta also was given in the Petitioner's name. The Petitioner under Rural Development Scheme implemented by the local body, has constructed a toilet with the financial assistance of the local body. The dispute is whether the toilet is constructed in the Petitioner's patta land or in the public property or pathway to which the Petitioner is not entitled to have any right.

4.The counter affidavit filed by the Commissioner, Melur Municipality containing the factual details about the action taken by the Tahsildar under the provisions of the Tamil Nadu Land Encroachment Act. It is the specific case of the second respondent that the toilet has been constructed by the Petitioner in front of his house with the help of the Municipality scheme and that the Petitioner has wrongly constructed the same in the pathway.

5.It is in these circumstances, this Court is inclined to dispose of the Writ Petition, on the following lines:-



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1.the third respondent is directed to conduct a survey of the land in question after issuing notice to the Petitioner as well as to the second respondent.

2.the survey and demarcation shall be conducted in the presence of the Petitioner and the second respondent.

3.if the survey is conducted and completed, the third respondent/Tahsildar shall draw a survey report pointing out whether there is any encroachment made by the Petitioner in the public property or in the property vested with the Local Body.

4.the said exercise shall be commenced and completed within a period of three weeks from the date of receipt of a copy of this order.

5.the survey report shall be furnished to the Petitioner and to the second respondent. Depending upon the survey report, the local body through the Tahsildar concerned, may initiate appropriate action, if any encroachment is found, under the Tamil Nadu Land Encroachment Act.



No costs. Consequently, connected Miscellaneous Petition is closed.

[S.S.S.R.,J.] [D.B.C,J.]
28.07.2023

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

vsn

To

- 1.The District Collector,
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Madurai.
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- 3.The Tahsildar,
Melur Town,
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S.S.SUNDAR, J.

AND

D.BHARATHA CHAKRAVARTHY, J.

vsn

ORDER MADE IN

W.P(MD)NO.19492 OF 2021

and

W.M.P(MD)No.16194 of 2021

28.07.2023