



W.P(MD).No. 10910 of 2015

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.02.2023

CORAM

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P(MD)No.10910 of 2015

and

M.P(MD) No. 1 of 2015

S.Sivaramakrishnan

..... Petitioner

- Vs-

1. The Revenue Divisional Officer,
Padmanabhapuram,
Kanyakumari District.

2. The Executive Officer,
Town Panchayat Office,
Nalloor Village,
Kanyakumari District.

3. Krishnankutty

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the impugned proceedings in Na.Ka.No.89/2015, dated 16.06.2015 passed by the second respondent and quash the same.

For Petitioner

: Mr.A.Arun Prasad



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For Respondents : Mr.V.Om Prakash
Government Advocate
for R1 and R2
: No appearance - For R3

ORDER

This writ petition has been filed challenging the impugned show cause notice issued by the second respondent calling upon the petitioner as to why the hen farm put up by the petitioner in the residential area should not be removed as he had not obtained any license.

2. The said show cause notice has been issued to the petitioner, based upon a complaint made by the third respondent, on the ground that by putting up the hen farm in the residential area, the petitioner is preventing the third respondent from using the public pathway.

3. The third respondent had also instituted a suit in O.S.No.166 of 2015, on the file of the learned I Additional District Munsif, Kuzhithurai, claiming the Easement right over the said pathway and for a mandatory injunction to remove the objections caused by the petitioner by putting up the hen farm. The said suit came to be dismissed by judgment and decree, dated 20.07.2018.



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4. Though notice was served to the third respondent, the third respondent has not chosen to appear either in person or through his counsel.

5. The impugned show cause notice is based on the complaint given by the third respondent as his right of easement was prevented by the petitioner. Since the suit filed by the third respondent itself seeking for easement right has been dismissed, there is no necessity for the second respondent to proceed further in the show cause notice, as he cannot take a different stand, when that has been adjudicated upon by an appropriate civil Court. Hence, the impugned show cause notice is set aside. Accordingly, this Writ petition is allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

28.02.2023

NCC: Yes / No
Index : Yes / No
Internet : Yes / No
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K.KUMARESH BABU, J.

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