



W.P(MD)No.8674 of 2015

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.08.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.8674 of 2015

and

M.P(MD)No.1 of 2015

S.Sheshurathinam

... Petitioner

Vs

1.The Assistant Collector,
Office of the Assistant Collector,
Satchiapuram,
Sivakasi,
Virudhunagar District.

2.The Block Development Officer,
Vembakotttai Panchayat Union,
Vembakotttai,
Sivakasi Taluk,
Virudhunagar District.

3.The Tahsildar,
Sivakasi,
Taluk Office,
Satchiapuram,
Sivakasi,
Virudhunagar District.



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4.The Deputy Superintendent of Police,
Office of the Deputy Superintendent of Police,
Sivakasi,
Virudhunagar District.

5.Indira Kumar

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the first respondent in ROC.No.B2/294/2011 dated 15.05.2015 and quash the same as illegal.

For Petitioner : Mr.M.Ashokkumar

For Respondents : Mr.N.Satheesh Kumar
Additional Government Pleader
for R.1 to R.4

No Appearance for R.5

ORDER

Heard the learned counsel appearing for the writ petitioner and the learned Additional Government Pleader appearing for the official respondents. The fifth respondent has been served and he had engaged the counsel but there is no representation.

2. The fifth respondent filed O.S.No.62 of 2007 on the file of District Munsif Court, Sivakasi for taking action against the writ petitioner. The



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Government of Tamil Nadu was one of the defendants. The suit came to be dismissed as default on 22.09.2010. Thereafter, the fifth respondent appears to have filed a representation before the authorities and followed up the same by filing W.P(MD)No.10941 of 2013 for consideration of his application. Following the direction given by this Court on 27.02.2013, the Assistant Collector, Sivakasi took up the matter for enquiry. After issuing notice to the petitioner and getting explanation from his son, the impugned order dated 15.05.2015 came to be passed for removing the construction put up by the petitioner. Challenging the same, the present writ petition came to be filed.

3. The case of the petitioner is that he has not committed any encroachment on public street. I went through the impugned order. There is no discussion whatsoever. There is nothing on record to show that Survey No. 1/207 has been classified as “street” in the revenue records. There is also nothing on record to show that the petitioner was given proper notice before passing impugned order. It is true that there is a reference to statement given by the petitioner's son R.Duraisamy. In the affidavit it has been stated that a telephonic intimation was received and some kind of statement was taken by the petitioner's son.



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4. In these circumstances, I deem it fit and proper to set aside the impugned order and remand the matter to the file of the first respondent to pass a fresh order on merits and in accordance with law. The first respondent shall issue fresh notice to the petitioner as well as the fifth respondent and after getting their statements and verification of the relevant records pass final order.

5. This writ petition is allowed on these terms. I make it clear that I have not gone into the merits of the matter. The defenses of the petitioner are left open. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

29.08.2023

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

To

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3.The Tahsildar,
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G.R.SWAMINATHAN, J.

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