



W.P.(MD)No.24108 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **04.10.2023**

CORAM

THE HONOURABLE **MR.JUSTICE S.M.SUBRAMANIAM**
AND
THE HONOURABLE **MR.JUSTICE V.LAKSHMINARAYANAN**

W.P.(MD)No.24108 of 2022
and W.M.P.(MD) No.18212 of 2022

P.Ganesan

...Petitioner

-Vs.-

- 1.The Commissioner,
Madurai City Municipal Corporation,
Madurai.
- 2.The Assistant Commissioner,
Madurai City Municipal Corporation,
Zone No.4 (South),
Madurai.
- 3.The Assistant Engineer,
Madurai City Municipal Corporation,
Zone No.4 (South),
Madurai.
- 4.The Junior Engineer,
Madurai City Municipal Corporation,
Zone No.4 (South),
Madurai.
- 5.The District Collector,
Madurai District,
Madurai.



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6.The Tahsildar,
Thiruparankundram Taluk,
Madurai District.

7.The Town Surveyor,
Thirupparankundram,
Madurai City Municipal Corporation,
Arignar Anna Maligai,
Madurai.

8.The Village Administrative Officer,
Madakulam Village,
Palanganatham,
Madurai.

...Respondents

PRAYER:- Writ Petition filed under Article 226 of Constitution of India, praying for issuance of a Writ of Certiorari, calling for records relating to the impugned notice dated 07.10.2022 issued by the first respondent and quash the same.

For Petitioner : Mr.J.Barathan

For Respondents : Mr.S.Vinak,
Standing Counsel for R1 to R4

Mr.N.Satheesh Kumar
Additional Government Pleader
for R5 to R8

ORDER

(Order of the Court was made by **S.M.SUBRAMANIAM, J.**)

The notice dated 07.10.2022, issued by the Commissioner, Madurai Corporation, for removal of encroachment is under challenge in the present Writ Petition.



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2. The petitioner states that the property in R.S.No.202/A1, Madakulam Village, Madurai District, measuring 62 cents absolutely belonged to his mother and he inherited the property by way of settlement of the year 2008.

3. The case of the petitioner is that the Commissioner, Madurai Corporation, surprisingly issued the impugned notice treating the petitioner as an encroacher and in this context the learned counsel for the petitioner reiterated that the petitioner is the absolute owner of the property and it was an unapproved layout where from the petitioner's mother purchased the property.

4. The power of judicial review by the High Court under Article 226 of the Constitution of India is to ensure the processes through which a decision has been taken by the competent authority in consonance with the statutes and rules in force and not the decision itself. In the present case, the Commissioner, Madurai Corporation, based on records initiated action under the provisions of the Madurai City Corporation Act to remove the encroachment holding that the subject property is classified as street. In order to maintain the street for the



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benefit of the public of that locality action was initiated to remove the encroachment.

5. The grounds raised on merits by the petitioner cannot be adjudicated in a writ proceedings since it requires securitization of documents and evidence in original. High Court cannot conduct a roving enquiry and when the title dispute has been raised by the petitioner, he has to approach the competent civil Court of law for the purpose of establishing his case. By virtue of an interim order granted in this Writ Petition, the authorities have not removed the encroachments so far. If at all the petitioner claims title over the subject property, he is at liberty to approach the competent civil Court of law in the manner contemplated.

6. Thus, the Writ Petition is dismissed. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

[S.M.S.J.,] & [V.L.N.J.,]
04.10.2023

NCC :Yes/No

Index :Yes/No

Internet :Yes/No

SJ

Note: Registry is directed to return the impugned Notice after replacing it with a xerox copy.



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