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W.P.(MD) No.23581 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.09.2023

CORAM:

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

**W.P.(MD) No.23581 of 2023
and
W.M.P.(MD) Nos.19779 & 19781 of 2023**

R.Venmani

... Petitioner

-VS-

1.The District Collector
Collectorate Complex
Virudhunagar District

2.The Tahsildar
Vembakottai Zone
Vembakottai-626 131
Virughunagar District

3.The President
Sivalingapuram Panchayat
Rajapalayam
Virudhunagar District

4.K.Srinivasa

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus calling for the records of the third respondent dated 19.09.2023 the order of communication and quash the same as illegal and consequently direct the respondents 1 to 3 not to evict the petitioner without following the due process of law.

For Petitioner : Mr.M.Ashok Kumar

For Respondents : Mr.D.Sachi Kumar
Additional Government Pleader for R1 to R3

ORDER

[Order of the Court was made by S.S.SUNDAR, J.]

Mr.D.Sachi Kumar, learned Additional Government Pleader, takes notice for the respondents 1 to 3.

2. Since we are not passing any adverse orders, notice to the fourth respondent is dispensed with.

3. With the consent of both sides, this writ petition is taken up for final hearing at the admission stage itself.



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4. The petitioner has filed this writ petition challenging the order, dated 19.09.2023, passed by the President of Sivalingapuram Panchayat / third respondent seeking assistance from the revenue officials for removal of encroachments in the pathway.

5. The case of the petitioner is that the land measuring an extent of 10 Cents in Survey No.176/1A/1A of Vedakarai Village, Sivalingapuram, Vembakottai Taluk, Virudhunagar District, is his own land and he is cultivating the same.

6. It is the grievance of the petitioner that the third respondent, without any notice to him regarding removal of encroachments, has passed the impugned order / communication requesting the Tahsildar / second respondent to give assistance to the Local Body for removal of encroachments in the pathway comprised in various survey numbers, including the survey number, to which the petitioner claims title.

7. Without going into the merits of the contentions of the petitioner, this Court finds that the impugned order is not passed in exercise



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of the statutory power and no show cause notice was issued before presuming that the petitioner has encroached the public pathway.

8. In the said circumstances, this Court is inclined to pass the following orders:

- (i) The writ petition is allowed.
- (ii) The order, dated 19.09.2023, passed by the third respondent, is quashed.
- (iii) The Tahsildar / second respondent is directed to conduct a survey, after issuing notice to the petitioner and the Local Body.
- (iv) The Tahsildar / second respondent shall draw a report after survey and inspection and serve a copy of the same to the petitioner and the Local Body.
- (v) In case there is any encroachment by any individual, appropriate proceedings may be initiated by the Tahsildar / second respondent, in accordance with law.



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(vi) No costs. Consequently, connected miscellaneous petitions are closed.

[S.S.S.R., J.]

[D.B.C., J.]

27.09.2023

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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