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W.P(MD)No.27637 of 2022 &  
W.A(MD)No.73 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.01.2023

CORAM :

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR**  
**and**  
**THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

W.P(MD)No.27637 of 2022 & W.A(MD)No.73 of 2023  
and  
WMP(MD)No.21751 of 2022 & CMP(MD)No.880 of 2023

W.P(MD)No.27637 of 2022:-  
R.Sridhar

... Petitioner

vs.

1. The President,  
K.Sundaresapuram Panchayat,  
Vilathikulam Panchayat Union, Thoothukudi District.

2. The Block Development Officer,  
Vilathikulam Panchayat Union,  
Vilathikulam, Thoothukudi District.

3. S.Muruga Kanaga Sundari

... Respondents

**PRAYER :** Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the impugned order dated 01.12.2022 on the file of the 1<sup>st</sup> respondent and quash the same.



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W.A(MD)No.73 of 2023

For Petitioner : Mr.G.Prabhu Rajadurai  
For R1 & R2 : Mr.K.Balasubramani  
Special Government Pleader

W.A(MD)No.73 of 2023:-

R.Sridhar

... Appellant

vs.

1. S.Muruga Kanaga Sundari
2. The Revenue Divisional Officer,  
Kovilpatti, Tuticorin District.
3. The Block Development Officer,  
Vilathikulam, Tuticorin District.
4. The District Collector,  
Thoothukudi District, Thoothukudi.
5. The Deputy Director of Town and  
Country Planning Department,  
Tirunelveli District.
6. The President,  
K.Sundaresapuram Special Panchayat,  
Vilathikulam Taluk, Thoothukudi District.

... Respondents

**PRAYER :** Writ Appeal filed under Clause 15 of Letters Patent, against the order dated 30.08.2022 in W.P(MD)No.20460 of 2022.



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**W.P(MD)No.27637 of 2022 &**  
**W.A(MD)No.73 of 2023**

For Appellant : Mr.G.Prabhu Rajadurai  
For R1 : Mr.V.Kishok Kumar  
For R2 to R5 : Mr.K.Balasubramani  
Special Government Pleader

**COMMON ORDER**

**(Order of the Court was made by D.KRISHNAKUMAR, J.)**

The 3<sup>rd</sup> respondent in the present writ petition filed W.P(MD)No.20460 of 2022 for a Mandamus, directing the 2<sup>nd</sup> respondent therein/Block Development Officer, Vilathikulam, Thoothukudi District, to implement the order passed by the 1<sup>st</sup> respondent therein/Revenue Divisional Officer, Kovilpatti, Tuticorin District, by his proceedings in Na.Ka.A2/11025/2021 dated 11.05.2022 within a time frame. In the said writ petition, the writ petitioner herein was arrayed as 3<sup>rd</sup> respondent. The Writ Court by order dated 30.08.2022 has disposed of the said writ petition by passing the following order:-

"Heard the learned counsel on either side.

2. Considering the nature of relief to be granted, issuance of notice to the third respondent is dispensed with.



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3. The petitioner claims that the third respondent had encroached on the petition mentioned road. The petitioner moved the first respondent who issued proceedings dated 11.05.2022 calling upon the second respondent to conduct the survey and remove the encroachment if found thereafter.

4. A reading of the proceedings dated 11.05.2022 issued by the first respondent does not indicate that the third respondent was heard. Therefore, the second respondent is directed to ensure that the survey of the petition mentioned properties are conducted through the jurisdictional Tahsildar. Such survey shall be conducted after putting the third respondent on notice. If at the end of the survey exercise and demarcation it is found that the third respondent has encroached the public road the same shall be removed after following due process of law. The entire exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order.

5. This writ petition is disposed of. No costs."

2. Challenging the aforesaid order, the writ petitioner in W.P(MD)No.27637 of 2022 has filed a writ appeal in W.A(MD)No.73 of 2023.



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3. Pursuant to the order passed in W.P(MD)No.20460 of 2022, dated 30.08.2022, the present impugned order dated 01.12.2022 has been passed by the 1<sup>st</sup> respondent/President, K.Sundaresapuram Panchayat, Vilathikulam Panchayat Union, Thoothukudi District, stating that pursuant to the order made in W.P(MD)No.20460 of 2022, dated 30.08.2022, though notices dated 28.09.2022 and 19.10.2022 were issued to the writ petitioner to remove the encroachment put up by him, he did not remove the same and therefore, the same will be removed on 07.12.2022 at 11.00 a.m. Challenging the said order, the petitioner has filed the present writ petition and at the time of admission, by order dated 07.12.2022, we have directed both the parties to maintain status-quo as on that date.

4. It is the only contention of the learned counsel for the writ petitioner that despite this Court in W.P(MD)No.20460 of 2022, dated 30.08.2022, has directed survey of the property in question through the jurisdictional Tahsildar, after putting the present petitioner on notice, without issuing such notice and conducting survey,



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straightaway, the present impugned order has been passed fixing the date for removal of encroachment on 07.12.2022 at 11.00 a.m, thereby, there is a violation of the order of this Court. On that score alone, the impugned order dated 01.12.2022 is liable to be quashed.

5. We find merit in the said contention. As rightly contended by the learned counsel for the petitioner, the impugned order dated 01.12.2022 does not reveal any issuance of notice to the petitioner, conduct of survey and demarcation of boundaries as directed by this Court in W.P(MD)No.20460 of 2022, dated 30.08.2022 and thus there is a violation of the direction of this Court and therefore, the impugned order is liable to be quashed.

6. Accordingly, the impugned order dated 01.12.2022 is quashed and the official respondents are directed to conduct survey of the property in question through the jurisdictional Tahsildar, after putting the writ petitioner on notice. If at the end of the survey exercise and demarcation, it is found that the writ petitioner has



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encroached upon the public road, the same shall be removed after following due process of law. The entire exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order.

7. With the above direction, W.P(MD)No.27637 of 2022 is allowed. In view of the allowing of the writ petition, the writ appeal in W.A(MD)No.73 of 2023 has become infructuous and therefore, the same is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

**[D.K.K.,J.] & [R.V.,J.]**  
**20.01.2023**

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



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W.A(MD)No.73 of 2023

**D.KRISHNAKUMAR, J.**  
**and**  
**R.VIJAYAKUMAR, J.**

bala

To

1. The Revenue Divisional Officer,  
Kovilpatti, Tuticorin District.
2. The Block Development Officer,  
Vilathikulam, Tuticorin District.
3. The District Collector,  
Thoothukudi District, Thoothukudi.
4. The Deputy Director of Town and  
Country Planning Department,  
Tirunelveli District.
5. The President,  
K.Sundaresapuram Special Panchayat,  
Vilathikulam Taluk, Thoothukudi District.

**COMMON ORDER MADE IN**  
**W.P(MD)No.27637 of 2022 &**  
**W.A(MD)No.73 of 2023**  
**DATED : 20.01.2023**