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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.11.2023

CORAM :

**THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HON'BLE MR.JUSTICE B.PUGALENDHI**

**WP(MD) No.25914 of 2023
and
WMP(MD)Nos.22259, 22260, 22261, 22262 of 2023**

1.M.Kannan

2.R.Vijayakumar

3.N.Abdul Riaz

... Petitioners

vs.

1.The Public Works Department,
Rep.by its the Superintendent Engineer,
Public Works Department,
Lower Cauvery Basin Circle,
Thanjavur.

2.The Executive Engineer,
Water Resources, Public Works Department (PWD),
Kumbakonam, Thanjavur.

3.The Assistant Engineer (WRO),
Cauvery Division, Pabanasam,
Presently Stationed at PWD Office,
Sakkottai, Kumbakonam, Thanjavur.



4.The Executive Officer,
Arulmighu Santhonagopalakrishnaswami
Temple,
Kumbakonam, Tanjore District.

5.Elephant G.Rajendran

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned notice in Se.Mu.Aa.No.1/Kho.1/2023/U.Po.Papanasam dated 16.10.2023 on the file of the respondent No.3, in so far as the petitioners are concerned, and quash the same as illegal and consequentially forbearing the respondents No.1 to 3 from evicting the petitioners in Town Survey Number 4 in Ward No.4, Block No.1, Kumbakonam Town, Tanjore District.

For Petitioner : Mr.Lajapathi Roy, Senior Counsel
for Mr.S.Rajasekar

For Respondents : Mr.R.Baskaran,
Additional Advocate General
assisted by Mr.K.Balasubramani
Special Government Pleader
for R1 to R3

Mr.V.Chandrasekar for R4



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ORDER

Heard the learned Senior Counsel appearing for the petitioner, the learned Additional Advocate General assisted by the learned Special Government Pleader for the respondents 1 to 3 and the learned standing counsel for the fourth respondent temple. Service of notice could not be served on the fourth respondent. However, we dispense with the same.

2.The fourth respondent herein filed WP(MD)No.22782 of 2022 for removing the encroachments made in the three meter width cement road in TS No.4 in Block – 1, Ward No.4 of the Kumbakonam Municipality. The writ petition was disposed of on 28.09.2022 in the following terms :

“4.Considering the submissions made by the learned counsel on either side, this writ petition is disposed of with a direction to the first respondent to conduct survey after issuing notice to all the parties concerned and send the survey report to the second respondent as expeditiously as possible and thereafter, the second respondent is directed to take necessary action for removal of the encroachments on the left side of Arasalaru, Pettai Salaikkara Street, Dharasuram in T.S.No.4 in Block – 1, Ward No.4 of the



Kumbakonam Municipality, after affording an opportunity of hearing to the petitioner and all the parties concerned and by following due process of law. Such an exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.”

Thereafter, notice dated 12.11.2022 was issued. Challenging the same, the petitioners filed writ petitions before this Court. The writ petitions were allowed on 28.11.2022 on the ground that the direction given by this Court for conducting survey to the Commissioner, Kumbakonam Municipality was not complied with. Thereafter, Form-III notice was issued on 05.05.2023. This was again put to challenge. We directed that the same would be treated as show cause notice and that the petitioners were given one more opportunity to offer their explanation. It is stated that the petitioners' explanation was considered and that thereafter the impugned order came to be passed.

3.The prime argument of the learned Senior Counsel appearing for the petitioners is that in the impugned order dated 16.10.2023, the extent of encroachment has not been specified. The learned Additional Advocate General would point out that after issuance of the proceedings, the



petitioners appeared before the authority and submitted in writing that they would on their own remove the encroachments and that they only prayed for time. Copies of statements made in writing were produced before this court.

4.In view of the same, we direct that survey shall held on 30.11.2023 from 09.00 A.M. On the said date, the petitioners as well as the representatives of the temple will be present. The exact extent of the encroachments will be identified. Copies will be served on the petitioners herein and the encroachments will be removed on their own by the petitioners then and there. If the petitioners fail to do so, the authorities can remove the encroachments without any further notice.

5.This writ petition is disposed of. No costs. Connected miscellaneous petitions are closed.

(G.R.S, J.) & (B.P, J.)
07.11.2023

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Note : Issue order copy today (23.11.2023)



To

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Lower Cauvery Basin Circle,
Thanjavur.
2. The Executive Engineer,
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Kumbakonam, Thanjavur.
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G.R.SWAMINATHAN, J.
and
B.PUGALENDHI, J.

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