



W.P.(MD)Nos.220 and 230 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

W.P.(MD)Nos.220 and 230 of 2023

and

W.M.P.(MD)Nos.189, 191, 201 and 203 of 2023

Selvarani

... Petitioner in both petitions

Vs.

- 1.The Ombudsman,
Tamil Nadu Local Bodies,
No.100, Anna Salai,
Guindy, Chennai 600 032
- 2.The Commissioner,
Madurai Corporation,
Anna Maligai,
Thallakulam, Madurai
- 3.The Assistant Commissioner,
Zone-05, (West),
Madurai Corporation Anna Maligai,
Thallakulam, Madurai
- 4.The Assistant Executive Engineer (Plan),
Madurai Corporation, Anna Maligai,
Thallakulam, Madurai.
5. P.Sivaji



W.P.(MD)Nos.220 and 230 of 2023

6. The District Collector,
Madurai.

...Respondents in both petitions

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PRAYER in W.P.(MD)No.220 of 2023: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned notice issued by the 3rd respondent dated 04.11.2022 and 25.11.2022 vide Ma5E2/00209/2022 and the notice issued by the 4th respondent dated 24.11.2022 and quash the same as illegal.

PRAYER in W.P.(MD)No.230 of 2023: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned notice issued by the first respondent in his proceedings in Miz vz;. 163kh/2022 dated 01.11.2022 and quash the same as illegal.

In both petitions:

For Petitioner	: Mr.C.M.Arumugam for Mr.A.Raja
For R1	: Mr.D.Shanmugaraja Sethupathy
For R2 to R4	: Mr.R.S.Devasena Standing Counsel
For R5	: Mr.R.Senthilkumar
For R6	: Mr.M.Lingaludrai Special Government Pleader

COMMON ORDER

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

During the course of arguments, it is brought to our notice that the husband of the writ petitioner is holding the post of Deputy Mayor in Madurai



Corporation and therefore, the Madurai Corporation may not take appropriate action to remove the encroachments, if any identified.

2.The writ petitions have been filed questioning the validity of the notice issued by the Assistant Commissioner, Madurai Corporation and the subsequent proceedings asking the petitioner to remove the alleged encroachments made in the common pathway failing which the corporation will initiate action.

3.The learned counsel for the petitioner mainly contended that it is not a pathway but a patta land. The petitioner is possessing relevant documents to establish her title. However, the order of the Ombudsmen, Tamil Nadu Local Bodies is against the petitioner.

4.Perusal of the said order, it is clear that the Ombudsmen only directed the authorities to initiate action, if any encroachments are identified. Therefore, the said order is not causing any prejudice to the petitioner to establish her case before the competent authorities by producing documents /relevant evidence.

5.May that as it be, we are of the considered opinion that if at all there is any encroachment, then the same is to be removed since the allegation is that the



encroachment is in a common pathway. Since the husband of the petitioner is a Deputy Mayor of Madurai Corporation, the learned respective counsel appearing on either side agreed that the District Collector may personally survey the subject property and take a decision regarding the alleged encroachment of a common pathway.

6.Thus the District Collector, Madurai District is *suo motu* impleaded as sixth respondent in the present writ proceedings, Mr.M.Lingadurai, learned Special Government Pleader accepts notice for the newly impleaded sixth respondent respondent.

7.The District Collector is directed to conduct field inspection and survey the subject property with the assistance of the qualified surveyors and identify the encroachment, if any in the pathway and accordingly, initiate further actions to remove the encroachments by following the procedures. The said survey is to be conducted in the presence of all the parties and if the parties have remained absent, the Collector shall proceed with the survey and complete the same and initiate all appropriate actions.



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8.It is brought to our notice that the construction put up by the petitioner is also unauthorized. The District Collector has to ascertain the said allegation also and initiate appropriate actions for demolition of unauthorized construction, if any identified. The said exercise is directed to be completed within a period of eight weeks from the date of receipt of a copy of this order.

9.These writ petitions stand disposed of with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

(S.M.S., J.) & (V.L.N., J.)
14.12.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To
1.The District Collector,
Madurai.



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AND

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