



W.P.(MD)No.29008 of 2023

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

W.P.(MD)No.29008 of 2023

and

W.M.P.(MD)Nos.25051 and 25052 of 2023

R.Stalin

... Petitioner

Vs.

1.The Assistant Divisional Engineer,
Highways Department,
(Construction Maintenance),
Musri, Trichy District.

2.The Tahsildar,
Thottiam Taluk,
Thottiam,
Trichy District.

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 1st respondent in connection with the impugned eviction notice issued by him vide his proceedings in Ku.No.106/2023/A1 dated 01.12.2023 and quash the same as



W.P.(MD)No.29008 of 2023

illegal, arbitrary and consequently direct the respondents not to disturb my shop and trees situated in survey No.78 of Kolakudi Village, Thottiam Taluk, Trichy District as they are no way disturbance to the public.

For Petitioner : Mr.G.Thalaimutharasu
For Respondents : Mr.S.P.Maharajan
Special Government Pleader

ORDER

(Order of the Court was made by ***V.LAKSHMINARAYANAN, J.***)

The petitioner claims that he is the owner of the property in Survey No. 78 at Kolakudi Village, Thottiam Taluk, Trichy District

2.Originally, the petitioner filed a writ petition before this Court in W.P. (MD)No.17489 of 2023. That writ petition also challenged the proceedings, which had been initiated under the State Highways Act. The said writ petition was allowed holding that prior to the eviction process, the respondents will have to conduct survey to identify the encroachment and thereafter, to proceed in accordance with law.



W.P.(MD)No.29008 of 2023

WEB COPY

3.The learned counsel for the petitioner states that by virtue of the title starting from 17.11.2004, by way of purchase, he is the owner of the property in which he has constructed a shop and planted two neem trees.

4.The learned Special Government Pleader appearing on behalf of the respondents submitted that pursuant to the directions of this Court by order dated 20.07.2023 in the earlier writ proceedings, survey was conducted and the subject property was identified as an encroachment. The subject property was found to be the property of the Highways. Consequently, notice was issued under Section 28 of the National Highways Act.

5.Heard Mr.G.Thalaimutharasu, learned counsel for the petitioner and Mr.S.P.Maharajan, learned Special Government Pleader for the respondents.

6.The issue as to whether the petitioner is the owner of the subject property or otherwise cannot be decided by us sitting in writ proceedings. The proper remedy for the petitioner is to file a suit.



W.P.(MD)No.29008 of 2023

WEB COPY

7. Accordingly, this writ petition stands dismissed. It is always open to the petitioner to approach the jurisdictional civil Court for the relief sought for by the petitioner. No costs. Consequently, connected miscellaneous petitions are closed.

(S.M.S., J.) & (V.L.N., J.)
07.12.2023

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

To

1. The Assistant Divisional Engineer,
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(Construction Maintenance),
Musri, Trichy District.
2. The Tahsildar,
Thottiam Taluk,
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W.P.(MD)No.29008 of 2023

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W.P.(MD)No.29008 of 2023

07.12.2023