



WEB COPY



W.P. No. 23869 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2024

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THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 23869 of 2023

B.R.Shanmugam

... Petitioner

-VS-

1. The District Collector,
Office of the District Collectorate,
Salem District.
2. The Commissioner of Municipality,
Office of the Commissioner of Municipality,
Edangansala (Municipality),
Salem District.
3. The Chairman,
Office of the Commissioner of Municipality,
Edangansala (Municipality),
Salem District.
4. The Tahsildar,
Sankari,
Salem District.

... Respondents

(R4 *suo motu* impleaded as per order dated 04.03.2024)

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, directing the Respondents not disturbing, trespassing, damaging and tampering the Petitioner's property and consequently this Court may be consider the Petitioner's representation dated



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17.07.2023, the Respondents do not enter the Petitioner's property until without

due process of law.

For Petitioner : Mr. G.Munuraj

For Respondents : Mr. P.Ganesan,
Additional Government Pleader

ORDER

Heard Mr. G.Munuraj, Learned Counsel for the Petitioner and Mr. P.Ganesan, Learned Additional Government Pleader appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The grievance ventilated by the Petitioner is that the Second and Third Respondents have been illegally disturbing the possession of his private property situate at Door No. 13/107, Palakkarathottam Elampilla Post, Salem District and as the representation dated 17.07.2023 made by him in that regard did not evoke any response, it has necessitated the filing of this Writ Petition.

3. Having regard to the contentions raised, this Court by order dated



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04.03.2024 had directed the Fourth Respondent to inspect the property along with Surveyor and measure the same with reference to the revenue records to ascertain as to whether the said contention is factually correct and submit a report with FMB sketch of the property. In furtherance to the said order, Learned Additional Government Pleader appearing for the Fourth Respondent has filed a memo dated 26.03.2024 stating as follows:-

"2. It is submitted that as per the orders of this Hon'ble Court, the survey was conducted in the presence of Surveyor, VAO, Revenue Inspector and the Petitioner herein on 14.03.2024. It is submitted that as per the revenue records Old S. No. 633/9, 635/5A, 633/4A after Natham development scheme was integrated as S. No. 945/10. It is submitted that S. No. 945/10 as per Natham Settlement Register the said land in S. No. 945/10, Idankanasali Beet-2 Village, Pazhakara Thotam, Sankagiri Taluk, Salem measuring about 0.0150.0 sq.mtrs is a patta land bearing Patta No. 163 and the same stands in the name of Sivakami. It is submitted that the Petitioner purchased the above referred property from Sivakami vide Patta No. 1299.



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3. *It is submitted that S. No. 945/13 which is south of S. No. 945/10 is classified as Vandipathai. The said land is use by the public as a road and the same is a mud road. It is relevant to state that there is no encroachment in the S. Nos. 945/13 and 945/10 as claimed by the Writ Petitioner and the Fourth Respondent has also filed a report in this regard and the present memo is filed based on the report of the Fourth Respondent in Na. Ka. No. 976/2024/Ko dated 25.03.2024."*

In view of the aforesaid explanation, which deserves acceptance, it is evident that the nature of relief claimed by the Petitioner falls within the realm of disputed questions of fact, which cannot be effectively determined by this Court in proceedings under Article 226 of the Constitution following summary procedure. It must be recapitulated here that the Hon'ble Supreme Court of India in the decision in ***Roshina T. -vs- Abdul Azeez K.T.*** [(2019) 2 SCC 329] has cautioned that such claims relating to property rights would have to be answered one way or the other only in a properly framed suit impleading necessary parties before the civil court. In such circumstances, the Petitioner has not been impeded from canvassing what is sought to be agitated in this Writ Petition in the aforesaid remedy and there is no acceptable explanation from the



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Petitioner for not having availed it. In that view of the matter, this Court is not inclined to entertain this Writ Petition or delve into the merits of the controversy involved.

In the result, the Writ Petition is disposed with the aforesaid observations.

No costs.

26.03.2024

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 05.06.2024.

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To

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P.D. AUDIKESAVALU, J.

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