



WEB COPY



W.P.No.33162 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE N. SENTHILKUMAR

W.P.No.33162 of 2023

and

W.M.P.No.32852 of 2023

D.Pushpa

... Petitioner

Vs.

1.The Government of Tamil Nadu,
Represented by its Secretary,
Municipal Administration and
Water Supply Department,
Fort St. George,
Chennai – 600 009.

2.The District Collector,
Chengalpattu District,
G.S.T.Salai,
Chengalpattu.

3.The Commissioner,
Madurantakam Municipality,
Madurantakam,
Chengalpattu District.



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4.Muthuraj

... Respondents

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Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus to direct the 3rd respondent to demolish the unauthorised construction raised by the 3rd respondent in the petitioner's land at Old Survey No.821/4 measuring to an extent of 10 ¼ cents out of 86 cents at Gandhi Nagar, Madurantakam Municipality, Chengalpattu District.

For Petitioner	:	Mr.L.K.Sudhirga Basu
For R1 & R2	:	Mr.M.Bindran Additional Government Pleader
For R3	:	Mr.P.Srinivas
For R4	:	No appearance

ORDER

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

This writ petition is filed for issuance of a Writ of Mandamus to direct the 3rd respondent to demolish the unauthorised construction raised by the 3rd respondent in the petitioner's land at Old Survey No.821/4 measuring an extent of 10 ¼ cents out of 86 cents at Gandhi Nagar, Madurantakam Municipality, Chengalpattu District.



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WEB COPY 2. Brief facts that are necessary for the disposal of this writ petition are as follows :

2.1. The petitioner claims ownership to an extent of 10 $\frac{1}{4}$ cents. It is the case of the petitioner that, originally, her father-in-law by name K. Muthu purchased an extent of 86 cents of land in New No.821/4, Gandhi Nagar, Madurantakam by a sale deed dated 06.06.1955. After the death of father-in-law of the petitioner on 18.05.1993, it is stated that the property of the petitioner's father-in-law devolved on his children, including the husband of the petitioner by name M. Dayalan. The petitioner claims ownership over the property as a heir of her husband who died on 20.05.2001.

2.2. It is the case of the petitioner that the other legal heirs of the petitioner's father-in-law, along with the petitioner and her children, had sold an extent of 75 $\frac{3}{4}$ cents out of 86 cents to the 4th respondent by a registered document of sale, dated 14.08.2013. Stating that an extent of 10 $\frac{1}{4}$ cents of the land had been retained by the petitioner and the other heirs of the petitioner's father-in-law, the petitioner states that she is the owner of an extent of 10 $\frac{1}{4}$ cents along with other legal heirs.



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3.The grievance of the petitioner is that the 3rd respondent has dug a bore well in the eastern side corner of the land retained by the petitioner and others (10 cents). Since the 3rd respondent has also put up construction, it is stated by the petitioner that the encroachment by the 3rd respondent is unauthorised and that therefore, it should be removed. It is also stated in the affidavit that the petitioner's entitlement and possession of the land along with other co-owners for 70 years, cannot be lost sight of, and that the petitioner has no other efficacious remedy except to file this writ petition.

4.Mr.P.Srinivas, learned counsel appearing for the 3rd respondent, submitted that, though it is admitted that the 3rd respondent has put up some construction in a land which is partly Government Poramboke land and partly the property which was reserved for public purposes namely "Palvadi", the title claimed by the petitioner is specifically denied by the 3rd respondent. It is to be noted that the petitioner and others have sold an extent of 75 ³/₄ cents in favour of 4th respondent by a document of sale dated 14.08.2013. From the boundary description of the property, except the property that was conveyed in the document, the vendors have not retained



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Court. Having regard to the fact that the petitioner has not produced before this Court any other material except the sale deed, this Court is of the view that the writ petition for issuance of a Writ of Mandamus cannot be entertained, unless the petitioner establishes her title or the title of the petitioner and others as claimed by her in the affidavit filed in support of this writ petition, before the Civil Court.

7. Therefore, this writ petition is dismissed. However, liberty is given to the petitioner to approach the Civil Court to establish her title or title of the petitioner and other co-owners in the manner known to law. The petitioner is also advised to seek appropriate consequential prayer in the suit to protect her interest, in case the petitioner establishes her title to the property. No costs. Consequently, connected miscellaneous petition is closed.

(S.S.S.R., J.) (N.S., J.)
23.01.2024

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Internet : Yes

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Index : Yes / No

Neutral Citation : Yes / No

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To

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