



W.P(MD)No.706 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 29.02.2024

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MR.JUSTICE B.PUGALENDHI**

W.P(MD)No.706 of 2024
and
W.M.P.(MD)Nos.704 and 705 of 2024

Jawahar

... Petitioner

Vs.

- 1.The District Collector,
Dindigul,
Dindigul District.
- 2.The District Revenue Officer,
Dindigul,
Dindigul District.
- 3.The Tahsildar,
Dindigul North Taluk,
Dindigul District.
- 4.The Assistant Engineer,
WRD Kudakanar Sub Division,
Irrigation Department,
Vedasunthur Post,
Dindigul District.
- 5.Palanichamy

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the Impugned Notice dated 18.12.2023 issued by the 4th respondent and quash the same as illegal.

For Petitioner : Mr.R.Ramadurai

For Respondents : Mr.K.Balasubramani,
Spl. Government Pleader for R1 to R4.

ORDER

Heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondents 1 to 4.

2.This is second round of litigation. The private respondent herein earlier filed W.P.(MD)No.27392 of 2019 for removal of encroachments in the petition mentioned odai which is comprised in S.No.351 of Mullipadi village. The writ petition was disposed of by us in the following terms:-



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“3. We direct the eighth respondent to take the matter to its logical conclusion. Due process of law shall be scrupulously observed. If encroachments have been demonstrated to exist, they shall be removed. The entire exercise shall be completed within a period of three months from the date of receipt of a copy of this order. If the encroachers / private respondents offer any explanation, the same will also be duly taken into account before passing final order. Thereafter, the impugned Form III notice was issued. The same is put to challenge at the instance of the writ petitioner herein.”

3.The learned counsel for the petitioner points out that on 14.11.2023, he submitted his detailed objections. He points out that without taking note of the same, Form III notice came to be issued. We find merit in this contention. When our order specifically mandates that the explanation / objection of the encroacher should be taken note of before passing final order, we are surprised to note in a cryptic non-speaking manner, Form III notice has been issued. It is for this reason, we are constrained to interfere in this matter. Instead of setting aside the impugned Form III notice, we direct that proper survey shall be conducted. Neither the petitioner nor the contesting private respondent



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will be given any fresh notice. Survey shall be held on 07.03.2024 from 09.00 onwards. It is for the petitioner to be present. The primary grievance of the petitioner appears to be that in the guise of removing encroachments, the authorities may infringe his rights in respect of S.No.354/2 which is said to be measuring 59 ares. Survey shall be conducted not only in respect of S.No.351/1A but also S.No.354/2. The impugned Form III notice will abide by the outcome of the said survey exercise. If the survey report indicates that encroachment has been committed in S.No.351/1A, it shall be removed then and there and there is no question of issuing any fresh notice.

4.This writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

(G.R.S.J.) & (B.P.J.)
29.02.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
ias



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and
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