



W.P(MD)No.13924 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.06.2024

CORAM:

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN**

W.P(MD)No.13924 of 2024

A.Thirumal

... Petitioner

VS.

1.The District Collector/High Level Monitoring Committee,
Madurai District,
Madurai – 625 002.

2.The Tahsildar,
Madurai East Taluk,
Collectorate,
Madurai – 625 002.

3.The Block Development Officer,
East Panchayath Union,
Race Course Colony,
Madurai – 625 002.

4.Vennila

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the third respondent to enforce the eviction notice issued dated 27.12.2017 bearing Na.Ka.No. 1792/2017/D3 issued to the fourth respondent/his neighbour to remove the illegally constructed toilet encroachment by encroaching the pathway

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comprised in Survey No.43/4B of Andarkottaram Village, Madurai District, within the stipulated time frame fixed by this Court.

For Petitioner	: Mr.B.Rooban
For Respondents	: Mr.S.Shaji Bino Special Government Pleader for R.1 & R.2
	: Mr.A.Kannan Additional Government Pleader for R.3

ORDER

(Order of the Court was made by R.SURESH KUMAR, J.)

The prayer sought for in this Writ Petition is for a Writ of Mandamus, to direct the third respondent to enforce the eviction notice, dated 27.12.2017 bearing Na.Ka.No.1792/2017/D3, issued to the fourth respondent/his neighbour to remove the illegally constructed toilet encroachment by encroaching the pathway comprised in Survey No.43/4B of Andarkottaram Village, Madurai District, within the stipulated time frame fixed by this Court.



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2.In Survey No.43/4B at Andarkottaram Village, Madurai District, there has been an alleged encroachment by the fourth respondent as she has constructed a toilet, which is a public road or pathway, according to the petitioner. Therefore, in order to remove such encroachment, the petitioner from the year 2014 has been fighting for it. Having considered these efforts taken by the petitioner, the Revenue Tahsildar, ie., the second respondent and the Block Development Officer ie., the third respondent, had issued proceedings in July 2017, November 2017 and December 2017, directed the fourth respondent to remove such encroachment. Since the encroachment had not been removed, the petitioner, in fact, had filed a Writ Petition in W.P(MD)No.2543 of 2022 seeking a Writ of Mandamus for the same relief to remove the toilet illegally constructed by the fourth respondent by encroaching the common pathway comprised in Survey No. 43/4B.

3.However, the said Writ Petition had been withdrawn by the very same writ petitioner and it has been recorded in the order of the Division Bench, dated 08.02.2022.



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4.After withdrawing the said Writ Petition, the petitioner had given a fresh request to the Revenue Divisional Officer, District Superintendent of Police and the Inspector of Survey, who constituted a committee, before whom, he made a representation on 13.02.2023. However, since it has not evoked any response, the petitioner once again has approached this Court by filing the present Writ Petition.

5.When this Writ Petition is taken up for hearing, Mr.S.Shaji Bino, learned Special Government Pleader appearing for the respondents 1 and 2, has submitted that insofar as the land in question, ie., at old Survey No.43/4 part and the new Survey No.43/91, a land to an extent of 0.00.64.0 square meter had been given patta for dwelling purposes to the mother-in-law of the fourth respondent.

6.Accordingly, in the said land which has been given patta, such a construction of the toilet has been made, therefore, the toilet constructed by the fourth respondent cannot be stated to be an encroachment. Therefore, no action can be taken against the fourth respondent, he contended.



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7.However, Mr.B.Rooban, learned counsel appearing for the petitioner, would submit that the mother-in-law of the fourth respondent might have been given patta for the purpose of constructing a dwelling house, however, insofar as the toilet she has constructed is concerned, it has been constructed only in the land which is earmarked as a public pathway, therefore, again it can only be construed as an encroachment, for which, action has to be taken by the official respondents.

8.This controversy as to whether the land in which the fourth respondent constructed a toilet for her family use is a construction made in the encroached area or in the land which has been allotted to the mother-in-law of the fourth respondent by the issuance of house patta called 'மனைவரி தோராயப் பட்டா' on 20.01.2022 by the second respondent/the Revenue Tahsildar, is a matter to be gone into not by this Court. Therefore, if at all the petitioner still has any grievance against the fourth respondent with regard to the toilet that has been constructed by her in the land in question that has to be established by the petitioner only before the civil Court by letting evidence. Therefore, at this juncture, the prayer sought for in this Writ Petition cannot be granted.



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9.Resultantly, the Writ Petition fails. Hence, it is dismissed.

However, there shall be no order as to costs.

[R.S.K.,J.] [G.A.M.,J.]
27.06.2024

NCC : Yes / No
Index : Yes / No
ps



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and
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ORDER MADE IN
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