



WEB COPY



W.P.(MD)No.8989 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

and

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.P.(MD)No.8989 of 2024

A.Ganesan

: Petitioner

Vs.

1.The District Collector,
Collector Office, Madurai,
Madurai District.

2.The Block Development Office (BDO),
Madurai East Taluk,
Madurai District.

3.The President,
Othakadai Panchayat,
Y.Othakadai,
Madurai District.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Mandamus, directing the first respondent to remove the encroachment in my land in survey No.



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70/1, Plot No.92A and 92B situated at Othakadai Village, within a time frame stipulated by this Court.

For Petitioner : Mr.B.Bhuvaneshvari
For Respondents 1&2 : Mr.S.Shaji Bino
Special Government Pleader
For Respondent No.3 : Mr.M.Ponnaiah

O R D E R

[Order of the Court was made by **R.SURESH KUMAR, J.**]

The prayer sought for herein is for a Writ of Mandamus, directing the first respondent to remove the encroachment in the petitioner's land in survey No.70/1, Plot No.92A and 92B, situated at Othakadai Village, within a time frame stipulated by this Court.

2.With regard to the land in question, it is the claim of one Kannadhasan that, he is the owner of the property. However, the land in question had been taken possession by way of construction of a Fair Price Shop by the official respondents and in meanwhile, the said Kannadhasan wanted to sell the property to one Ganesan, who is none other than the present petitioner. In this regard, a writ petition was filed and the same was dismissed, against which, he filed an intra court appeal in W.A.(MD)No.478 of 2023, where the present writ petitioner also had been a party as sixth respondent.



After hearing both sides, the Division Bench had passed the following order:

“15.The learned counsel for the 6th respondent would submit that pending Writ Petition, the local body had constructed a fair price shop and it is operating the same. This fact is disputed by the learned counsel appearing for the appellant. We are not inclined to go into the issue as matters relating to possession has to be dealt with by the Civil Courts. Therefore, it is left open to the parties to approach the civil courts insofar as the issue of recovery of possession / injunction is concerned.

16.A Court by its verdict merely declares the position of law and does not create any new right. It is always open to the local body to acquire the property after following due procedures as contemplated under the law. In the event of re-presentation of the document by the presentee, the Registering Authority shall comply with the process of registration within a period of four [4] weeks from the date of registration.

17.With the above observation, this Writ Appeal stands allowed. No costs. Consequently, connected miscellaneous petition is closed.”



3.Subsequently, the sale has been completed between Kannadhasan and Ganesan, ie., the present petitioner and by virtue of the sale, now the present petitioner has become the owner of the property in question. Therefore, the only question is whether the possession has to be recovered from the official respondent or not, for which, the answer has been given by the earlier Division Bench vide order dated 15.12.2023 made in W.A.(MD)No.478 of 2023 and the relevant portion of the order has already been extracted hereinabove.

4.Therefore, what has been directed in the said case would *mutatis mutandis*, be made applicable to the present writ petitioner also. Therefore, if the petitioner becomes the owner, he has to go before the Civil Court and seek for recovery of possession, of course on merits. Therefore, for the question of recovery of alleged encroachment in the land in question, the respondents have to defend themselves, for which, the Civil Court has to give opportunity for letting evidence. Those exercises will be undertaken only by the Civil Court. Since already an order has been passed relegating the parties to approach the Civil Court, reiterating the same, this Writ Petition is also liable to be disposed of.



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5.Accordingly, this Writ Petition stands disposed of. There shall be no order as to costs.

[R.S.K.,J.] & [G.A.M.,J.]
10.04.2024

Neutral Citation : Yes/No

Index : Yes/No

Internet : Yes/No

MR



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ORDER MADE IN
W.P.(MD)No.8989 of 2024

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