



WP(MD). No.11320 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Date : 22/05/2024

CORAM

THE HON'BLE Ms.JUSTICE R.N.MANJULA

and

THE HON'BLE MR.JUSTICE C.KUMARAPPAN

WP(MD). No.11320 of 2024

and

W.M.P(MD)No.10064 of 2024

M.Velsamy

... Petitioner

Vs

1.The Assistant Divisional Engineer,
Department of Highways,
Ambasamudram,
Tirunelveli District.

2.The Tahsildar,
Cheranmahadevi Taluk,
Tirunelveli District.

... Respondents

PRAYER :- Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the first respondent in Se.Mu.Aa.No.82/2024/Vu, dated 13.05.2024 and quash the same and consequently, direct the respondents not to remove the house and shops situated in Survey Nos.48/1A, 48/2A, 2B of Mukkoodal Village of Tirunelveli District.



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For Petitioner : Mr.S.S.Thesigan

For Respondents : Mr.A.Kannan,
Additional Government Pleader

ORDER

(Order of the Court was made by R.N.MANJULA, J)

Heard Mr.S.S.Thesigan, learned counsel for the petitioner and Mr.A.Kannan, learned Additional Government Pleader for the respondents.

2. The petitioner has filed this writ petition challenging the impugned order passed by the first respondent in Se.Mu.Aa.No.82/2024/Vu, dated 13.05.2024 and to direct the respondents not to remove the house and shops situated in Survey Nos.48/1A, 48/2A, 2B of Mukkoodal Village of Tirunelveli District.

3. It is the submission of the learned counsel for the petitioner that the impugned order has been passed based on the allegation that the petitioner has encroached the land in Survey No.48/B of Mukkoodal Village of Tirunelveli District and the impugned order has been passed without conducting any survey.



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4. In fact, the impugned order appears to have been passed after considering the representation/explanation given by the petitioner on 18.03.2024 stating that he has constructed the buildings without any violation.

5. In such case, it would have been obligatory on the part of the respondents to survey in the presence of the petitioner and furnish him the survey report and thereafter pass orders to remove the encroachment, if the survey report reveals any encroachments have been made by the petitioner.

6. Even though the petitioner has submitted his explanation to consider his request, the impugned order has been passed behind the back of the petitioner. Therefore, the impugned order dated 13.05.2024 seems to be in violation of the principles of natural justice and the same is liable to be set aside.

7. Attention of this Court was drawn to the letter of the petitioner, dated 17.05.2024, to the first respondent wherein he has given an undertaking to remove the shops constructed by him encroaching the lands belongs to the National Highways Department. However, the said letter does not show where the said shops are situated. Even it is presumed that on 17.05.2024, the



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petitioner had undertaken to remove the encroachment, the respondents cannot take advantage and pass the impugned order before the survey exercise is done in the presence of the petitioner and therefore, the impugned order is liable to be set aside.

8. In the result, the impugned order passed by the first respondent in Se.Mu.Aa.No.82/2024/Vu, dated 13.05.2024, is hereby set aside. The respondents shall consider the case of the petitioner and pass appropriate orders in accordance with law, after survey in the presence of the petitioner and after providing opportunity to him.

9. With the above directions, this writ petition is **disposed of**. No costs. Consequently connected Miscellaneous Petition is closed.

(R.N.M, J.) (C.K.,J.)
22.05.2024

NCC : Yes/No
Index : Yes/No

PM



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To

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