



W.A(MD)No.1075 of 2016

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.03.2024

CORAM:

**THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HON'BLE MR JUSTICE K.K. RAMAKRISHNAN**

**W.A(MD)No.1075 of 2016
and
C.M.P(MD)No.6493 of 2016**

K.Veerasley

...Appellant/Petitioner

Vs.

1.The District Collector,
Theni District,
Theni.

2.The Tahsildar,
Bodinayakkanur Taluk,
Theni District.

3.The Executive Officer,
Boothipuram Town Panchayat Union,
Theni District.

4.O.Murugavel

....Respondents/Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order made in W.P(MD)No.13695 of 2011, dated 11.02.2016.



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For appellant : Mr.R.Suriyanarayanan
For R1 & R2 : Mr.P.Thilakumar
Government Pleader
For R3 : Mr.M.Prakash

JUDGMENT

(Order of the Court was made by V.BHAVANI SUBBAROYAN,J.)

This Intra Court appeal is directed against the order passed by the Writ Court, dated 11.02.2016 in W.P(MD)No.13695 of 2011.

2. The appellant is the owner of the property situated in S.No.529/41 South Chavadi Street, Boodhipuram Town Panchayat. The fourth respondent is the neighbor and he has the property adjacent to the above said property. He made a representation to the Hon'ble Chief Minister on 10.11.2011 stating that the writ petitioner said to have made encroachment of 29 sq.ft in survey No.529/42 which is classified as a street and constructed Arulmigu Aathiparasakthi Sidhar Peedam. Therefore, the third respondent issued the impugned notice, dated 25.11.2011 under Section 182 of the Tamil Nadu District Municipalities Act, 1920 to remove the encroachment made by the appellant.



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3. The said impugned order was challenged by the writ petitioner in the writ petition.

4. The Writ Court finds that the encroachment was made in the street and hence, dismissed the writ petition and issued a direction to the third respondent to proceed further as per the impugned order dated 25.11.2011.

5. Aggrieved by the said order, the appellant has filed the present appeal in the year 2016 raising the following grounds:-

(i) The Writ Court failed to consider that the petitioner's construction is not a recent origin, but very old one and hence, the procedure stated under Section 182(2) of the Tamil Nadu District Municipalities Act has to be applied.

(ii) The Writ Court failed to consider that the respondents have not produced any record to show that the encroachment is in the village road.

(iii) The Writ Court failed to consider the specific plea of the appellant that the dispute area is come under the road portion or the appellant land.



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6. In the said circumstances, the Writ Court passed the order on the misconception of the fact that the encroached portion is in the Government land. Therefore, the learned counsel for the appellant seeks for setting aside the impugned order issued by the third respondent and also the Writ Court order.

7. This case came up for hearing before this Court on 21.02.2024, on that day, this Court directed the counsel representing the Municipality and the Government to ascertain the compliance of the order passed by the Writ Court. The same was not complied with. Thereafter, on 11.03.2024 this Court passed the following order:-

“This Court, by order dated 21.02.2024 directed the second and third respondents to depute a Head Surveyor to measure the disputed area and report the same before this Court by way of sketch, photographs and the revenue records. In spite of this order that was communicated to the authorities in time, no report has been filed before this Court.

2. The learned counsel appearing for the third respondent has also sent a letter dated 22.02.2024 to the third respondent by enclosing a copy of the order dated 21.02.2024, which was also received by him. But, there is no response from the third respondent.

3. Hence, this Court directs all the official respondents ie., respondents 1 to 3, to be present before this Court on 13.03.2024.



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8. As per the order of this Court, the District Collector, Theni appeared through Video Conferencing and the concerned Tahsildar of Bodinayakkanur Taluk and the Executive Officer of the Boothipuram Town Panchayat appeared in person and submitted a report. As per the report annexed with the revenue documents it is clear that the land in S.No.529/41 0.00.29 acres belongs to one K.Veerachamy and Survey No.529/42 001.58 acres is classified as Sarkar Poramboke and in the FMB sketch it is mentioned as road. In that, 25 sq.mt was constructed for temple called Athiparasakthi temple, which is literally on the road and also causing hindrance to the public while passing the road.

9. The learned Government Pleader appearing for the respondents would submit that both the officers have measured and filed the proper report belatedly and seeking an apology for the belated compliance of the order of this Court.

10. This Court is not intending to punish anybody and did not expect any apology from the respondents but expect the officers to do their duty properly as per law.



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11. This Court directed the District Collector to be present through online before this Court to bring it to her knowledge that the District Collector has to be more vigilant and authorise some officer to supervise the Court proceedings and defend the same and assist the Court to enable the Court to do justice to all the parties, who are aggrieved.

12. In view of the above factual report filed by the competent officers, this Court dispose the writ appeal in the following terms:-

Considering the subsequent event happened, pending the writ petition both the appellant and the fourth respondent are no more, this Court issue a direction to the respondents 2 & 3 to issue notice to the legal heirs of the appellant and the fourth respondent within a period of four weeks from the date of receipt of a copy of this order and upon proceed further as per the law for removing the encroached portion of the land made in the road portion by following the procedure stated under Section 182(2) of the Tamil Nadu District Municipalities Act on or before 02.06.2024.



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13. In view of the above, this Writ Appeal is disposed of. No costs.
Consequently, connected miscellaneous petition is closed.

14. Post the matter on 03.06.2024 for reporting compliance.

[V.B.S.,J.] [K.K.R.K.,J.]
13.03.2024

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V.BHAVANI SUBBAROYAN, J.
and
K.K.RAMAKRISHNAN, J.

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JUDGMENT MADE IN
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13.03.2024