



W.P(MD)No.14980 of 2018

WEB COPY **BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 27.02.2024**

**CORAM:**

**THE HONOURABLE MR.JUSTICE D. KRISHNAKUMAR  
and  
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**W.P(MD)No.14980 of 2018  
and  
W.M.P(MD)No.15538 of 2018**

Syed Ibrahim

... Petitioner

vs.

1.The Tahsildar,  
Tenkasi Taluk,  
Tirunelveli District.

2.K.N.Subramania Raja

... Respondents

**PRAYER :** Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records relating to the impugned order made in O.Mu.Aa.6/2524/2018 dated 04.06.2018 by the first respondent and quash the same.

For Petitioner

: Mr.D.Venkatesh

For R-1

: Mr.J.Ashok,  
Additional Government Pleader

For R-2

: Mr.S.Malaikani



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**ORDER**

**(Order of the Court was made by D. KRISHNAKUMAR, J.)**

The petitioner has filed this writ petition challenging the order passed by the first respondent, dated 04.06.2018.

2. According to the respondents, a lay out has been approved by the competent authority and in the said lay out, a road has been earmarked for utilising the same as a pathway. The said pathway is leading to the house site belongs to the second respondent. However, the petitioner has constructed a wall encroaching the said pathway. Therefore, the first respondent has passed the impugned order directing the petitioner to remove the wall.

3. However, according to the petitioner, he has constructed a wall well within the house site purchased by him and the second respondent has no access to the above pathway. But, the first respondent without conducting any enquiry, has mechanically has passed the impugned order and no opportunity was granted to the petitioner and therefore, there is violation of principles of natural justice. It is further contended by the petitioner that the



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subject pathway is maintained by the Municipality and therefore, Municipality is the competent authority for taking steps for removal of encroachment and the first respondent has no jurisdiction to pass the impugned order.

4. At this juncture, the learned Additional Government Pleader appearing for the first respondent also agreed that the subject pathway is under the control of the municipality.

5. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

6. We have carefully perused the impugned order wherein there is no mention about the opportunity being granted to the petitioner and without providing opportunity, the first respondent has passed the impugned order. In such circumstances, we see some force in the the contention raised by the petitioner that there is violation of principles of natural justice and therefore, the impugned order is liable to be quashed.



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7. Further, as agreed by both parties, the subject land is vested with the municipality and therefore, the first respondent has no jurisdiction to take action for the removal of encroachment and as such, on the ground of jurisdiction also, the impugned order lacks merits and requires interference.

8. In the result, this writ petition is allowed and the impugned order of the first respondent, dated 04.06.2018, is hereby set aside. If there is any encroachment, necessary action shall be taken by the competent authority on merits and in accordance with law, after providing opportunity to the petitioner. Such exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order. No Costs. Consequently, connected miscellaneous petition is closed.

**[D.K.K.,J.] [R.V.,J.]**

**27.02.2024**

NCC : Yes / No  
Index : Yes / No  
PM



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To

The Tahsildar,  
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**D. KRISHNAKUMAR,J.**  
**and**  
**R.VIJAYAKUMAR,J.**

PM

**ORDER MADE IN**  
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