



W.P.(MD)No.28011 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **25.11.2024**

CORAM:

THE HONOURABLE **MRS.JUSTICE N.MALA**

**W.P.(MD)No.28011 of 2024**

Swami Vivekananda Vidhayalaya  
Higher Secondary School,  
Vairichettipalayam,  
Rep. By its Secretary

... Petitioner

/Vs./

1.The District Collector,  
Trichirappalli District,  
Collectorate Buldings,  
Trichirappalli.

2.The Tahsildar,  
Thuraiyur Taluk,  
Trichirappalli District.

3.The Taluk Surveyor,  
Thuraiyur Taluk,  
Trichirappalli District.

... Respondents

**PRAYER:** Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondents to take appropriate action to measure/survey the petitioner's property situate in Survey No. 1/1A of Pasalikombai Village, Thuraiyur Taluk, Trichirappalli District within the time frame to be fixed by this Court.



W.P.(MD)No.28011 of 2024

For Petitioner : Mr.K.S.Kathiravan

For Respondents : Mr.M.Muthumanikkam

Government Advocate Civil side

**ORDER**

This Writ Petition is filed for issuance of Writ of Mandamus directing the respondents to take appropriate action to measure/survey the petitioner's property situate in Survey No.1/1A of Pasalikombai Village, Thuraiyur Taluk, Trichirappalli District within the time frame to be fixed by this Court.

2.The property in Survey No.1/1 in Pasalikombai Village, Thuraiyur Taluk, Trichirappalli District was settled in favor of the petitioner School vide a registered settlement deed dated 02.07.1954. Ever since, the said school is in exclusive possession and enjoyment of the said property. The revenue records were also mutated in favour of the petitioner school for the subject property. As the subject property measuring an extent of 25.00 cents was kept vacant, the same was misused by certain unruly elements. The petitioner therefore submitted an application to the respondents to survey, to measure and to fix the four



W.P.(MD)No.28011 of 2024

boundaries of the subject property. As no action was taken, this Writ Petition is filed for the aforesaid relief.

3. It is seen that though the petitioner has filed this Writ Petition for issuance of writ of mandamus, the petitioner has not given any representation to the respondents calling them to survey the land in question.

4. The Hon'ble Supreme Court of India on the nature of a writ of mandamus held as follows in the following cases:

**(i)Saraswathi Industrial Syndicate Limited and others Vs Union of India** reported in **1974 (2) SCC 630**.

*"24. As the appeals fail on merits we need not discuss the technical difficulty which an application for a writ of certiorari would encounter when no quasi-judicial proceedings was before the High Court. The powers of the high Court under Article 226 are not strictly confined to the limits to which proceedings for prerogative writs are subject in English practice. Nevertheless the well recognised rule that no writ or order in the nature of a Mandamus would issue when there is no failure to perform a mandatory duty applies in this country as well. Even in cases of alleged breaches of mandatory duties the salutary general rule which is subject to certain exceptions applied by us as it is in England when writ of Mandamus is asked for could be stated as we find it set out in Halsbury's Taws of England (3rd edition vol.*



W.P.(MD)No.28011 of 2024

WEB COPY 13 p. 106):

*"As a general rule the order will not be granted unless the party complained of has known what it was he was required to do so that he had the means of considering whether or not he should comply and it must be shown by evidence that there was a distinct demand of that which the party seeking the mandamus desires to enforce and that that demand was met by a refusal."*

25. In the cases before us there was no such, demand refusal. Thus no ground whatsoever is shown here for the issue of any writ order or direction under Article 226 of the Constitution. These appeals must be and are hereby dismissed but in the circumstances of the case we make no order as to costs.

**(ii) In Amrit Lal Berry Vs K.N.Kapur and others** reported in **1975 (4) SCC 714**, the Court held as follows:

*"25. In the petition of K. N. Kapur & others, we do not even find at assertion that any representation was made against any violation of a petitioner's right. Hence, the rule recognised by this Court is Kamini Kumar Das Choudhury v. State of West Bengal & Ors. that a demand for justice and its refusal must precede the filing of a petition asking for direction or Writ of Mandamus, would also operate against the petitioners."*

**(iii) In the State of Haryana and others Vs Chanan Mal and others** reported in **1977 1 SCC 340**, it was held as follows:

*"43. Any petitioner who applies for a writ or order in the nature of a mandamus should, in compliance with a well known rule of practice, ordinarily, first call upon the authority concerned to discharge its legal obligation and show that it has*



W.P.(MD)No.28011 of 2024

WEB COPY

*refused or neglected to carry it out within a reasonable time before applying to a Court for such an order even where the alleged obligation is established."*

5. Even in the latest judgments reported in **2022(17) SCC 188 (Union of India and others Vs. Bharat Forge Limited and another)** and **2023(1) SCC 386 (Hero Motocorp Limited Vs. Union of India and others)**, the Hon'ble Supreme Court of India had enunciated the principles of writ of mandamus

6. From a reading of the aforesaid judgments, it is clear that there should be a demand and refusal for mandamus. The purpose behind making a demand is to give an opportunity to the authorities to redress the grievance. The demand is not an empty formality, but it should be made with a view to giving an opportunity to the authority to comply with the same. Giving of reasonable opportunity, in my view, is not a mere ritual. The authority should be given practicable time to comply with the demand. In the present case, no representation was submitted and therefore, in my view, in the absence of a representation to the respondents to process the application, the mandamus prayed for cannot



W.P.(MD)No.28011 of 2024

be issued. I am therefore inclined to dismiss the writ petition. It is open to the petitioner to submit a representation to the respondents giving reasonable time for compliance, failing which, to apply for writ of mandamus. The writ petition is dismissed with the above observation. No costs.

**25.11.2024**

Index : Yes / No

NCC : Yes / No

CM

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WEB COPY



W.P.(MD)No.28011 of 2024

**N.MALA, J.**

CM

Order made in  
**W.P.(MD)No.28011 of 2024**

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