



W.P.No.11738 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 25.06.2025

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**

and

THE HONOURABLE MR.JUSTICE **HEMANT CHANDANGOUDAR**

W.P.No.11738 of 2023

Kandasamy

S/o.Sithan

... Petitioner

vs.

1. The District Collector
Tiruvannamalai District
Vengikkal, Tiruvannamalai.
2. The Commissioner
Panchayat Union
Thandrapet.
3. The District Elementary Educational Officer
D.E.E.O's Office
Vengikkal, Tiruvannamalai.
4. The Tahsildar
Thandarampattu Taluk
Tiruvannamalai District.

... Respondents

* R4 suo-motu impleaded vide order dated 25.06.2025
in W.P.No.11738 of 2023

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Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus, to direct the respondents herein to consider and pass appropriate orders on the petitioner's representation dated 20.09.2021 requesting the respondents to remove the encroachments made by the 2nd respondent herein in the petitioner's land in S.No.36/2A2 of Guberapattinam Village.

For Petitioner : Mr.R.Bhagavat Krishna
for Mr.V.Prakash Babu
For Respondents : Mr.M.S.Arasakumar
Government Advocate, for R1, R2 & R4
Mr.R.Neethiperumal, for R3

ORDER

[Order of the Court was made by **HEMANT CHANDANGOUDAR J.**]

The captioned Writ Petition (hereinafter referred to as “WP” for the sake of brevity, convenience, and clarity) has been filed seeking the issuance of a writ of mandamus, directing the respondents to take appropriate action on the petitioner’s representation dated 29.01.2021 for removal of the alleged encroachment made by the second respondent with respect to the land in Survey No. 36/2A2, Guberapattinam Village, Thandarampattu Taluk, Tiruvannamalai District.

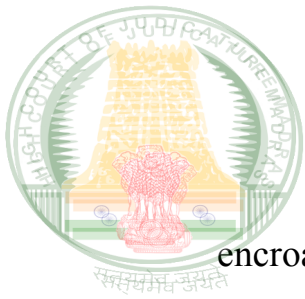


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2. The case of the petitioner is that an extent of 0.17 cents in the subject land was voluntarily gifted by him and his father in favour of the second respondent through a registered gift deeds, specifically for the purpose of constructing a school building. However, according to the petitioner, the second and third respondents have constructed the school building beyond the gifted extent and have encroached upon an additional area, which allegedly remains under the exclusive ownership and possession of the petitioner.

3. In support of his contention, the petitioner has placed reliance on a communication issued by the Tahsildar, Thandarampattu, dated 02.07.2019 bearing reference No. Na.Ka.E2-2951/2019. The said communication, based on a surveyor's report, records that an extent of 0.07¼ cents beyond the gifted land has been utilized by the second and third respondents for the construction of the school building.

4. Mr. M.S. Arasakumar, Learned Government Advocate appearing for respondents 1 and 2, submitted that a fresh survey will be conducted in the presence of the petitioner. He further submitted that if, upon such survey, it is established that the second and third respondents have

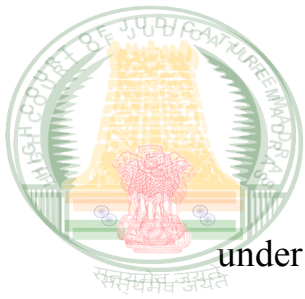


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encroached upon an extent of 0.07¼ cents of land belonging to the petitioner (i.e., land not covered by the registered gift deed), appropriate steps will be taken either to remove the encroachment or to compensate the petitioner in accordance with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter “the 2013 Act”). He also submitted that the Tahsildar, Thandarampattu Taluk, Tiruvannamalai District, is the competent authority to conduct such a survey.

5. In view of the above submissions, this Court, suo motu, impleads the Tahsildar, Thandarampattu Taluk, Tiruvannamalai District, as the fourth respondent in the captioned WP. Mr.M.S.Arasakumar, learned Government Advocate, accepts notice on behalf of the newly impleaded fourth respondent as well.

6. Though the dispute pertains to an alleged encroachment over private land, it is a well-established principle of law that the State, being a constituent of a welfare State governed by the rule of law, cannot dispossess or deprive a citizen of their immovable property without following the due process of law. Any such act must conform to the constitutional guarantee



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under Article 300-A of the Constitution of India, which protects the right to property. Therefore, in light of the alleged violation of the petitioner's proprietary rights without adherence to the statutory procedure, we find that it is appropriate to entertain the present writ petition.

7. In order to ascertain whether the second and third respondents have encroached upon the petitioner's land in excess of the extent conveyed under the registered gift deed, this Court is of the considered view that the writ petition can be disposed of by issuing the following directions:

- i) The fourth respondent (R4), with the assistance of the jurisdictional Surveyor and under the supervision of the first respondent (R1), shall conduct a fresh survey of the subject property. Prior notice of the date and time of the survey shall be issued to the petitioner, as well as to the second and third respondents (R2 and R3). The survey shall be completed within a period of eight (8) weeks from today, i.e., on or before 20.08.2025.
- (ii) Upon completion of the survey, the first respondent (R1) shall prepare a detailed survey report and furnish copies of the same to the writ petitioner and to R2 and R3, under due acknowledgment, within a period of four (4) weeks from the date of completion of the survey.



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(iii) If, upon survey, it is found that an encroachment has been made by R2 and R3 over the petitioner's land, the Respondents 1 & 4 shall either:

(a) remove the encroachment and restore possession of the said land to the Petitioner at its own cost;

or

(b) initiate proceedings under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and pay just and fair compensation to the Petitioner in accordance with law. The entire process of compensation, if adopted, shall be completed within a period of four (4) months from the date of issuance of the survey report by the District Collector.

7. With the above directions, the Writ Petition is disposed of. There shall be no order as to costs.

(M.S.J.,)

(H.C.J.,)

25.06.2025

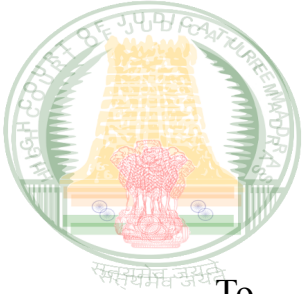
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**M.SUNDAR, J.,
and
HEMANT CHANDANGOUDAR, J.,**

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