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W.P.No.1919 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2025

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **K.RAJASEKAR**

W.P.No.1919 of 2025
and
W.M.P.No.2193 of 2025 in W.P. No.1919 of 2025

P.Sakthivel

... Petitioner

Vs.

1.The Commissioner,
Mettur Municipality,
Mettur Dam - 636 401.
Salem District.

2.Erode Sarvodaya Sangam,
Mettur Municipality Bunk,
Shop No.10, West Main Road,
Mettur Dam, Salem District – 636 401.

3.Palaya Munghai Cut Piece,
Encroached Shop,
West Main Road, Mettur Dam,
Salem District – 636 401.

4.Eswaran
5.Venkatesh
6.Thangavelu
7.Rani

.. Respondents

Page Nos.1/8



W.P.No.1919 of 2025

Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus directing the 1st respondent to remove the encroachment made by the respondent nos. 2 to 7 on the western side road in the 1st respondent municipality, situated in Block 46, West Main Road, Mettur Dam, Salem – 636 401 based on the petitioner's representation dated 06.05.2024.

For Petitioner : Mr.Ravindran Venkatachalapathy

For Respondents : Dr.T.Seenivasan
Special Government Pleader
for R1

ORDER

[Order of the Court was made by **M.SUNDAR, J.,**]

Captioned main 'Writ Petition' (hereinafter 'WP' for the sake of brevity) has been filed with a mandamus prayer qua R1 (Commissioner, Mettur Municipality) seeking removal of alleged encroachment said to have been made by R2 to R7 (private respondents) on the western side of a road vested in R1 Municipality.

2. Mr.Ravindran Venkatachalapathy, learned counsel on record for writ petitioner submitted that writ petitioner has made a request more particularly a representation dated 06.05.2024 but in vain and that has necessitated the captioned main WP.



W.P.No.1919 of 2025

WEB COPY

3. Issue notice to official respondent.

4. Dr.T.Seenivasan, learned Special Government Pleader accepts notice for R1 and submits that a suit on the same subject matter being O.S.No.140 of 2019 on the file of District Munsif Court at Mettur is pending and an interlocutory application being I.A.No.2 of 2019 has been disposed of by a detailed order dated 03.01.2020.

5. This Court went into the official e-courts website of the District Courts and ferreted out the details of the suit. It is seen that R4 (Mr.Eswaran), R6 (Mr.Thangavelu) and R7 (Ms.Rani) are plaintiffs 2, 3 and 4 respectively, more importantly the writ petitioner (Mr.Sakthivel) is second defendant in the suit. It is seen that R1 before us is the first defendant in the suit. It is seen from the suit that the plaintiffs averred that they are in occupation of land belonging to R1 for over 40 years.

6. Learned Special Government Pleader for R1 submits that the suit property is the same as the subject matter of the captioned main WP. Be that as it may, there is no whisper about the suit in the writ affidavit. When faced with this situation, learned counsel for writ

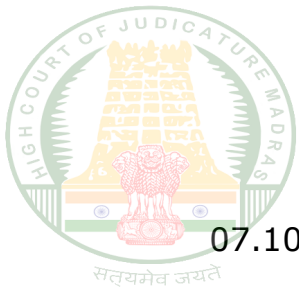


W.P.No.1919 of 2025

petitioner had no answer much less a convincing answer. This by itself calls for dismissal of the captioned main WP, however, we examined the matter a little more as learned counsel for writ petitioner persisted and submitted that he wants to argue the main WP though it was pointed out that there is no whisper about the suit in the writ affidavit. To be noted, on a demurrer, even if the act of the writ petitioner in not making a whisper about the suit in the writ affidavit is seen as a omission and not a suppression, it cannot be countenanced as complete disclosure and coming to Court with clean hands is non-negotiable and imperative.

7. Be that as it may, as learned counsel on record for writ petitioner insisted on arguing captioned main WP, we heard the learned counsel.

8. Learned counsel drew our attention to an earlier writ petition being W.P.No.3460 of 2020 filed by one Mr.Ponraj @ Ravichandran arraying Mettur Municipality as R1 alongside the three private respondents with a prayer to remove the alleged encroachments qua subject matter land. This writ petition came to be disposed of on



W.P.No.1919 of 2025

07.10.2021 by another Hon'ble Division Bench inter-alia directing R1 to remove the encroachments. Learned counsel submitted that pursuant to 07.10.2021 order, notices were issued to alleged encroachers, alleged encroachers moved this Court by way of a writ petition being W.P.No.7659 of 2022. To be noted, there is no mention about this W.P.No.7659 of 2022 also in the writ affidavit though learned counsel on record for writ petitioner argued on the same. This Court wanted to know the reason for not making any averment regarding W.P.No.7659 of 2022 or the orders thereat. Learned counsel on record for writ petitioner did not have any answer for this too. However, we went into High Court website and ferreted out the order dated 20.04.2022 in W.P.No.7659 of 2022 filed by R2 before us i.e., Erode Sarvodaya Sangam. This writ petition along with W.P.No.7663 of 2022 filed by eleven individuals was disposed of holding that another order to protect the lease area till lease is extended would not apply to the petitioners and on this ground, the other Hon'ble Division Bench has held that there is no ground to interfere in the impugned notices.

9. As we have written that the private respondents and other alleged encroachers should be given opportunity, we make it clear that all the rights and contentions of the private respondents / R2 to R7 are



W.P.No.1919 of 2025

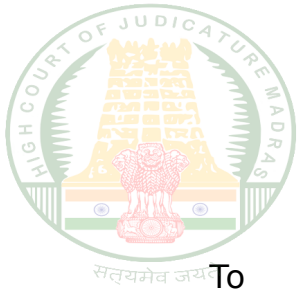
preserved, when show caused. Therefore, there is no impediment in disposing of captioned WP in the Admission Board by taking up the same with the consent of learned counsel on record for writ petitioner and learned counsel for R1.

10. In the light of the narrative thus far, though captioned main WP deserves dismissal for serious omissions, we dispose of the same as closed as it prima facie appears to be a case of encroachment in public land. R1 will do well to proceed against alleged encroachers in accordance with law after giving opportunity to the alleged encroachers and by considering the responses of the encroachers on its own merits and in accordance with law. Consequently, captioned Writ Miscellaneous Petition (WMP) thereat is disposed of as closed. Though this is a fit case for imposition of costs, considering the nature of the mater, we refrain from imposing costs.

(M.S.,J.) (K.R.S.,J.)
28.01.2025

Index : Yes / No
Neutral Citation : Yes / No
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Page Nos.6/8



W.P.No.1919 of 2025

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To
The Commissioner,
Mettur Municipality,
Mettur Dam - 636 401.
Salem District.

**M.SUNDAR, J.,
and
K.RAJASEKAR, J.,**

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W.P.No.1919 of 2025



WEB COPY



W.P.No.1919 of 2025

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