



W.P.(MD)No.4333 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 19.02.2025

CORAM:

THE HONOURABLE **MRS. JUSTICE J. NISHA BANU**
and
THE HONOURABLE **MRS. JUSTICE S.SRIMATHY**

W.P.(MD)No.4333 of 2025
and
W.M.P.(MD)No.3108 of 2025

K.Subburam

... Petitioner

Vs.

1.The District Collector,
Virudhunagar District,
Virudhunagar.

2.The Revenue Divisional Officer,
Sivakasi, Virudhunagar District.

3.The Tahsildar,
Watrap Taluk, Watrap,
Virudhunagar.

4.The Executive Officer,
W.Pudupatti Town Panchayat,
Watrap Taluk,
Virudhunagar.

5.A.Padmanabhan

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a ***Writ of Certiorari***, to call for the records pertaining to the 4th respondent notice Na.Ka.No.204 of 2024, dated 22.01.2025, to quash the same.



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For Petitioner : Mr.M.Govindarajan
For R1 to R4 : Mr.J.Ashok
Additional Government Pleader

ORDER

(Order of the Court was delivered by **S.SRIMATHY, J.**)

The present writ petition is filed for writ of Certiorari, to quash the impugned notice, dated 22.01.2025. Through the impugned order, the 4th respondent Executive Officer had directed the petitioner to remove the encroachments within a period of 15 days, otherwise, the respondents would be constrained to remove the encroachments and the cost would be recovered from the petitioner.

2. The contention of the petitioner is that the said property is a residential property belonging to the petitioner's family for more than 90 years and the petitioner is title and possession of the said property. The said fact would be evident from the Civil Court judgment rendered in O.S.No.124 of 1945, dated 30.03.1946. Further while issuing patta in the name of the petitioner, the respondents had incorrectly stated the extent of the property. Hence, the petitioner submitted a petition to correct the extent in the light of the judgment



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passed in O.S.No.124 of 1945. Without considering the facts stated above, the present impugned notice is issued. Further, the respondents had directly issued an order to remove the encroachment without issuing show cause notice. Hence, the notice is issued without opportunity to the petitioner, which is violative of principles of natural justice. Further, the respondents did not survey and demarcate the land stated in the notice and also failed to take into consideration of the fact that the petitioner's residence was constructed and was existing for several decades. The petitioner has also made an application to correct the extent of the residential property. Further, at the instance of the 5th respondent, the notice is issued. The 5th respondent is a land grabber, taking advantage of the petitioner's absence is trying to grab the land. Hence, the present writ petition is filed.

3. On the other hand, the Learned Additional Government Pleader appearing for the respondents submitted that the impugned notice was issued by the Executive Officer of W.Pudupatti Town Panchayat, based on the direction of the Tahsildar of Watrap. The said Tahsildar is the heading the group to remove the encroachment and has passed an order in NA.KA.No.A4/2588/2024, dated 14.11.2024. Based on the said direction, the impugned notice was issued. Further, the 3rd respondent has identified the encroachment to the extent of



0.00.06 square meter comprising of steps, sunshade and balcony. Therefore, there is no illegality in the said order.

4. After hearing the rival submissions, this Court is of the considered opinion that the said order was issued without giving any show cause notice to the writ petitioner. Any removal of encroachment ought to be as per law, especially, after surveying the property and after giving show cause notice directing the encroacher to submit objection / explanation, if any. Once the objections are submitted, the respondents ought to pass an order, after giving a personal hearing, if need be. In the present case, the respondents have directly issued the order to remove the encroachment without giving any opportunity to the petitioner. Further, it is seen that the respondents have stated that the petitioner has encroached by putting up sun shade and balcony. Whether it would amount to encroachment or unauthorized construction ought to be considered. Further the petitioner is having suit judgment in his favour.

5. Therefore, this Court is of the considered opinion that instead of setting aside the impugned order, the petitioner is directed to submit his objections along with documents, especially judgment and decree passed in O.S.No.124 of 1945 within a period of four weeks from the date of receipt of the copy of the



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order. The respondents shall consider the same and pass orders within a period of eight weeks therefrom.

6. With the above said directions, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

[J.N.B., J.] [S.S.Y., J.]
19.02.2025

Index : Yes / No
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