



W.P(MD)No.12019 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 05.02.2025

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THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Writ Petition(MD)No.12019 of 2018

V.Saraswathi

..Petitioner

Vs

1.The District Collector,
Madurai District,
Madurai.

2.The Tahsildar,
Madurai North Taluk,
Madurai Collector Office Complex,
Madurai.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records of the second respondent's impugned communication Na.Ka.No. 12016/2017/Aa5 dated 19/04/2018 and quash the same and to direct the respondents to pay compensation to petitioner for the illegal demolition of her stall and damaging the articles used for her day-to-day business in her shop situated in Town Survey No.811/2 at Alagarkovil Main Road, Madurai and permit her to rebuild her shop and house in the said place by considering petitioner's representation dated 23.10.2017 within the stipulated time.



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For Petitioner : Mr.B.Jeyakumar
For Respondents : Mr.A.Kannan
Addl. Govt. Pleader

ORDER

The petitioner seeks issuance of a Writ of Certiorarified Mandamus to quash the second respondent's impugned communication Na.Ka.No. 12016/2017/Aa5, dated 19.04.2018, and further to direct the respondents to pay compensation to the petitioner for the illegal demolition of her Tea Stall and damaged articles used for her day-to-day business in her shop situated in Town Survey No.811/2 at Alagarkovil Main Road, Madurai and permit her to rebuild her shop and house in the said place by considering her representation, dated 23.10.2017.

2. It is an undisputed fact that the petitioner's father, one Vasudevan, had occupied the land situated in Survey No.811/2 at Alagarkovil Main Road, Madurai. After his death, the petitioner continued to be in occupation of the same. She was running a Tea Stall, in which, she was vending food items and she is residing at the near portion of the property. She filed a suit in O.S.No. 675 of 2000 on the file of the District Munsif Court, Madurai, and obtained an interim order of injunction. The defendant in the said suit is the Madurai



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Corporation. While so, on 09.10.2017 at about 06.00 a.m., the second respondent/Tahsildar demolished the Tea Stall and the residential property of the petitioner. This has given cause of action for the present writ petition.

3. The petitioner claims that property to the tune of Rs.4,00,000/- had been damaged by the second respondent/Tashildar. She relies upon the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014, and Rules framed thereunder. She states that she is a 'street vendor' and she had been removed unceremoniously and therefore, she is entitled to the relief as stated in the writ petition.

4. Taking note of the allegations, this Court directed the learned Additional Government Pleader to file a counter.

5. The second respondent/Tashildar, Madurai North, has filed a counter, wherein he has stated that survey No.811/2 is a water channel. He relied upon the judgment in the case of **T.K.Shanmugam Vs. State** reported in **2015(2)CWC 849** stating that over water channels, no civil Court can grant an order of injunction. It also pleads that the water channel is a drainage channel, and it is for the Madurai North Village. Encroachments were removed pursuant to the order of this Court in W.P.(MD)No.689 of 2005, dated 02.02.2005. He



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pleads that as the encroachment on the water channel is highly objectionable,

the prayer sought for in this writ petition is not entertainable.

6. I have carefully considered the rival submission of the petitioner and the respondents.

7. The Town Survey Land Register produced by the learned Additional Government Pleader shows that S.No.811/2 is a 'Sarkkar Poramboke' and it classified as “வாய்க்கால் புறம்போக்கு” which implies it is a water channel. By the very fact that it is water channel, any occupation over the same is highly objectionable. In fact, the Government does not have power to regularize the encroachment which have been made over the water bodies. The ratio of the judgment relied on by the learned Additional Government Pleader in **T.K.Shanmugam's case** (supra) is squarely applies to the facts of this case.

8. The petitioner is not claiming any right, title, or interest against the Government over the said land. She is an unauthorized occupant of the property, which is the water channel. Hence, any encroachment of the same is objectionable. If I were to concede to the prayer of the petitioner, that would be supporting encroachment over the water channel. That is not the purport of Article 226 of the Constitution of India. The fact that the civil court had



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granted an injunction against the Municipality does not mean it binds the

Tahsildar also.

9. Mr.B.Jeyakumar states that for an encroachment similarly situated, the very same Tahsildar is taking a lenient view.

10. The learned Additional Government Pleader states that it is the intention of the Revenue Authorities to remove all the encroachments and not permit any encroachment over the water channel. He further states that action has been initiated for the removal of other similar encroachments also.

11. The statement of the Additional Government Pleader is recorded.

12. In the light of the above discussion, this Writ Petition is dismissed.

No costs.

05.02.2025

NCC : Yes/No

Index : Yes/No

Internet: Yes

skn



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V.LAKSHMINARAYANAN, J.

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