



W.A.(MD)No.2838 of 2025

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.10.2025

CORAM:

**THE HONOURABLE MR.MANINDRA MOHAN SHRIVASTAVA,
CHIEF JUSTICE
and
THE HONOURABLE MS.JUSTICE R.POORNIMA**

**W.A.(MD)No.2838 of 2025
and
C.M.P.(MD)No.15838 of 2025**

The Commissioner,
Sivakasi Municipal Corporation,
Sivakasi,
Virudhunagar District, Pincode - 626 123.

... Appellant

-VS-

1.T.Raja Usha Rani,
W/o.J.Thenrajan,
No.258, Kamarajar Street,
Kanthapuram Colony, Sivakasi,
Virudhunagar District, Pin - 626 124.

2.The Director of Municipal Administration,
75, Urban Utility Building,
M.R.C.Nagar, Santhome High Road,
R.A.Puram,
Chennai - 600 028.

... Respondents

PRAYER:- Writ Appeal filed under Clause 15 of the Letters Patent, against the orders dated 13.08.2025 and 20.08.2025, passed in W.P.(MD)No.22342 of 2025.



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For Appellant : Mr.M.Ajmal Khan
Additional Advocate General
Assisted by
Mrs.S.Devasena
Standing Counsel

For Respondent No.1: Mr.VR.Shanmuganathan

For Respondent No.2: Mr.S.P.Maharajan
Special Government Pleader

JUDGMENT
[Delivered by The Hon'ble CHIEF JUSTICE]

This appeal is directed against the orders dated 13.08.2025 and 20.08.2025 passed in W.P.(MD) No.22342 of 2025.

2. Learned Additional Advocate General submits that the first respondent/writ petitioner had earlier filed a writ petition in W.P.(MD)No. 2746 of 2025, aggrieved by the action of the authorities in rejecting her application seeking permission to use the pathway, which, according to the appellant, could not be permitted as it forms part of a public pathway. Without challenging the communication of the appellant dated 08.01.2025, the first respondent/writ petitioner filed that petition assailing the action of the authorities in converting the subject land as forest land, and also sought



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relief to enforce her claim for easementary right. That writ petition was dismissed on 03.02.2025, with liberty to the first respondent/writ petitioner to file a civil suit for enforcement of her alleged easementary rights. A writ appeal filed against that order was also dismissed on 11.08.2025.

3. It is further submitted that, in the meantime, the first respondent/writ petitioner filed another writ petition in W.P.(MD)No.22342 of 2025, seeking issuance of a Writ of Mandamus to direct the authorities to decide her appeal against the communication dated 08.01.2025.

4. Learned State counsel contends that, once the writ petition was dismissed, followed by the dismissal of the writ appeal, without any liberty granted to file an appeal against the communication dated 08.01.2025, the second round of litigation aimed at nullifying the earlier orders or proceedings was not maintainable. He further submits that, since liberty was specifically granted only to file a civil suit for enforcement of easementary rights, the first respondent/writ petitioner could not have insisted on the consideration of any appeal challenging the correctness or sustainability of the communication dated 08.01.2025. In any event, such



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liberty, if at all, ought to have been sought and granted in the first round of litigation, and in the absence thereof, the second writ petition is not maintainable.

5. Learned counsel would further submit that, in the second round of writ proceedings, while issuing a writ of mandamus directing the authorities to decide the appeal, a *status quo* order was also passed. It is submitted that various interim orders were subsequently passed upon mentioning and in response to interlocutory applications filed from time to time, on 20.08.2025, 12.09.2025, and 16.09.2025.

6. Learned counsel for the State submits that the second round of proceedings constitutes an abuse of the process of law.

7. It is further contended that, as the matter stands today, even after the filing of a civil suit and an application for injunction therein, the writ petition ought to have been rejected.



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8. In view of the above submissions, it is prayed that the orders dated 13.08.2025 and 20.08.2025 be set aside.

9. Per contra, learned counsel for the first respondent would submit that, although the first writ petition in W.P.(MD)No.2746 of 2025 was dismissed by this Court on 03.02.2025, there was no finding rendered with regard to the correctness or validity of the order dated 08.01.2025 passed by the appellant Municipal Corporation. It is submitted that, though liberty was granted to the first respondent to file a civil suit, such liberty would not extinguish her right to file an appeal against the communication dated 08.01.2025.

10. In fact, as on the date of dismissal of the writ petition, *i.e.*, 03.02.2025, the first respondent's appeal remained pending before the competent authority. Since that appeal had not been disposed of, the first respondent approached this Court by filing a writ petition seeking issuance of an appropriate Writ of Mandamus directing the authority to decide the said appeal. The subsequent orders passed were intended to protect the interest of the first respondent, who claimed to have been using the pathway for a long period.



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11. Having heard learned counsel for the parties and upon perusal of the various orders passed by both the Division Bench and the learned Single Judge of this Court in successive rounds of litigation, we are of the firm view that, once the writ petition was dismissed on 03.02.2025, followed by the dismissal of the writ appeal on 11.08.2025, the petition filed by the first respondent thereafter, seeking to re-agitate the same issue under the guise of a writ of mandamus to compel consideration of her appeal against the order dated 08.01.2025 was not maintainable.

12. It appears that, aggrieved by the order dated 08.01.2025, the first respondent not only filed an appeal, but also preferred a writ petition before this Court seeking enforcement of her alleged easementary right. In that petition, she also questioned the action of the appellant Corporation, alleging that land earmarked for a park was being converted into forest land.

13. At that stage itself, the first respondent could have sought a writ of mandamus for a decision on her pending statutory appeal, instead of insisting that the writ petition be decided on its own merits. However, the



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first respondent/writ petitioner did not press for disposal of her appeal, but instead raised substantive issues on merits. This led the Court to observe that the appropriate remedy available to her was to file a civil suit.

14. Evidently, the first respondent/writ petitioner could not have pursued two parallel remedies in respect of the same cause of action. Notably, at that stage, she did not make any specific prayer for disposal of her appeal. Furthermore, the allegation that the Corporation authorities were attempting to convert park land into forest land was found to be baseless. While dismissing the writ petition by order dated 03.02.2025, the learned Single Judge also recorded that there was no challenge to the order dated 08.01.2025.

15. While pursuing the first writ petition and praying for various reliefs, it was open to the first respondent/writ petitioner to seek an appropriate writ of mandamus directing disposal of her appeal. However, having failed to seek that relief, she must be deemed to have waived the same. Had such a prayer been pressed, the Writ Court could have considered whether she should be permitted to pursue the statutory appeal or be confined to the civil remedy for enforcing her easementary claim.



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16. A writ appeal filed against the dismissal of the said writ petition was also dismissed.

17. Having failed in both the writ petition and the writ appeal, the first respondent/writ petitioner has now filed a fresh writ petition seeking a writ of mandamus for disposal of her statutory appeal. Such a prayer cannot be entertained, as liberty had already been granted to the first respondent/writ petitioner to pursue her remedy by way of a civil suit. The attempt to re-agitate the matter under the guise of a different relief is impermissible.

18. The second writ petition, if it may be so described, was barred by the principle of constructive *res judicata*. A relief which could have been sought in the first writ petition was not prayed for, despite being available to the first respondent/writ petitioner at that stage.

19. It has also been brought to the notice of this Court that the first respondent/writ petitioner has, in fact, approached the Civil Court by filing a suit. It is further stated at the bar that the application for injunction



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filed in the said civil suit has already been decided, although the suit itself is still pending adjudication.

20. All the subsequent orders passed on 20.08.2025, 12.09.2025, and 16.09.2025 are merely offshoots of the directions issued on 13.08.2025.

21. In view of the above discussion, we are of the considered view that the impugned orders passed by the learned Single Judge on 13.08.2025 and 20.08.2025 are not sustainable in law and are, accordingly, set aside. We make it clear that all subsequent directions passed by the learned Single Judge are set aside in view of the order passed in this appeal.

22. However, we leave it open to the first respondent/writ petitioner to work out her remedy, if so advised, in respect of the order dated 10.10.2025 passed by the Civil Court rejecting her application for temporary injunction.



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The Writ Appeal is, accordingly, allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

[MANINDRA MOHAN SHRIVASTAVA, C.J.] [R.POORNIMA, J.]
13.10.2025

NCC : Yes / No
Index : Yes / No

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To:

- 1.The Commissioner,
Sivakasi Municipal Corporation,
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