

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 31.01.2019****CORAM:****THE HON'BLE Mr. JUSTICE R.SUBBIAH
AND
THE HON'BLE Mr. JUSTICE B.PUGALENDHI****W.P. (MD) No.23552 of 2018**

Jingler's Nursery and Primary School,
Aathikulam Nagakulam Panchayat,
Rep.by its Correspondent
S.Viswanathan

... Petitioner

Vs.

1.The Assistant Engineer,
Public Works Department,
Water Resources Organization,
Irrigation Section II,
Madurai - 2.

2.The Tahsildar,
Madurai North Taluk,
Madurai.

3.The District Collector,
Madurai District, Madurai.

4.Sanjay

... Respondents

PRAYER: The petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 to 3 to take appropriate action against the 4th respondent for his high hand activity in removing the tress situated in part of S.No.3/1, behind the petitioner school in Aathikulam Village, Madurai North Taluk, Madurai District.

For Petitioner

: Mr.R.Murali, for
Mr.M.Suresh Kumar

For Respondents

: Mr.M.Jeyakumar, AGP for R1 to R3
Mr.S.A.Ajmal Khan for R4

**ORDER****(Order of the Court was made by R.SUBBIAH,J.)**

This Writ petition has been filed to issue a Writ of Mandamus, directing the respondents 1 to 3 to take appropriate action against the 4th respondent for removing tress, behind the petitioner school situated in part of S.No.3/1 at Aathikulam Village, Madurai North Taluk, Madurai District.

2. According to the petitioner, he is running a school from the year 2005 after obtaining necessary approval and the said school is maintained by a Trust namely, Arunothayam Educational Trust. The school is situated in part of a survey number ie. S.No.4/4 at Aathikulam Village, Madurai North Taluk, Madurai. Behind the school, a vacant space is available in Survey No.3/1. One Nagammal was in possession and enjoyment of a portion of the vacant space in Survey No.3/1. Hence, the 2nd respondent has issued an eviction order under Land Encroachment Act, 1905 to the said Nagammal. On 18.03.2005, the said Nagammal had executed a gift deed in favour of the above said Trust. From the date of execution of the said gift deed, the said land is under the control of the said Trust. Whiles, on 11.12.2007, the Public Works Department has issued a proceedings to remove the encroachment in the land in Survey Nos.3 and 4, without issuing any show cause notice. Challenging the said proceedings, the petitioner has filed a Writ petition in W.P.(MD)No.10718 of 2007 before this Court and this Court by order dated 01.07.2008 directed the first respondent to consider the representation of the petitioner. However, no order has been passed so far.

3. The further case of the petitioner is that in the interest of public, he has cultivated various trees in the said land. In the mean while, on 06.10.2018 the respondents 1 to 4 have removed all the trees in the said land. In this regard, the petitioner has submitted a representation to the respondents 1 to 3 on 15.10.2018. The 4th respondent, under the guise of removal of encroachment, benefited himself by taking advantage of his official capacity. Hence, the petitioner is before this Court with the present Writ petition.

4. The 4th respondent has filed a counter affidavit stating that the respondents are bound to remove the encroachment in the Kanmoi and water catchment area. Further, no valuable trees were in existence in the said land. If the petitioner is really aggrieved, he would have approached this Court at the time of removal of such encroachment. Pursuant to the direction of the third respondent, the fourth respondent has acted.

<https://hcservices.ecourts.gov.in/hcservices/> of the averments made by the fourth respondent in the counter affidavit, we are of the opinion that the fourth



respondent has acted as per the direction of the third respondent. Further, the petitioner has not approached this Court at the time of removal of such encroachment. Hence, recording the statement made by the fourth respondent, this Writ petition is closed.

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Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Assistant Engineer,
Public Works Department,
Water Resources Organization,
Irrigation Section II,
Madurai - 2.

2.The Tahsildar,
Madurai North Taluk,
Madurai.

3.The District Collector,
Madurai District, Madurai.

+1 cc to Mr.M.Suresh Kumar , Advocate SR.No.44108
+1 cc to Mr.S.A.Ajmal Khan , Advocate SR.No.44305
+1 cc to The Special Government Pleader Sr.No.44415

nbj

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KM/(03.05.2019) 3P 7C