

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 9.9.2015

CORAM:

THE HONOURABLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.P. No.27926 of 2015

Mrs.S.Sathathunnissa ... petitioner

versus

- 1 The District Collector
Krishnagiri District Krishnagiri.
- 2 The Superintendent of Police
Krishnagiri District Krishnagiri.
- 3 The Assistant Director of Town
Panchayats Krishnagiri.
- 4 Kaveripattinam Selection Grade
Town Panchayat Rep. by its Executive
Officer O/o.Town Panchayat No.554 Salem
Main Road Kaveripattinam Krishnagiri
District.
- 5 The Chairman
Kaveripattinam Selection Grade Town
Panchayat O/o.Town Panchayat No.554 Salem
Main Road Kaveripattinam Krishnagiri
District. ... respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order in Na.Ka.No. 311/2014(A1) dated 28.08.2015 on the file of the 4th Respondent and quash the same consequentially forbearing the Respondents from blocking or obstructing the present form of passage/access towards the shops in her building named as JKS Automobiles from Kaveripattinam Bus Stand without altering its present nature of the open passage by putting up any type of construction in any manner.

For petitioner : Mr.P.Wilson, Senior Counsel,
for Mr.R.Girirajan

For Respondents : Mr.N.Sakthivel, Government Advocate,
for respondents 1 to 3

Mr.P.Sanjay Gandhi, Additional Government Pleader
for respondents 4 and 5

O R D E R

(made by K.K.SASIDHARAN, J.)

The petitioner, who is having a clear access to reach her commercial building, wanted the prime land owned by the local body, admeasuring 720 sq.ft., to be used as an alternative access to take goods to her shop.

The facts :-

2. The petitioner is stated to be in possession and enjoyment of the property bearing S.No.621A1A. There is a commercial building in the said property functioning as an automobile shop.

3. It is the case of the petitioner that she is having free and easy access through the vacant space having 30' x 24' feet, adjacent to the bus stand owned by the Kaveripattinam Selection Grade Panchayat. The petitioner has been using the said land as an access to her building for the last more than 15 years. The local body took action for demolition of the adjacent buildings and construction of new shops, by making use of the land in question. The representation submitted by the petitioner to retain the land as an access was considered by the 4th respondent, pursuant to the direction in W.P.No.10722 of 2015. The local body rejected her request by order dated 28 August 2015. Feeling aggrieved, the petitioner is before this Court.

Submissions:-

4. The learned Senior Counsel for the petitioner contended that the way available to the petitioner is a narrow one and as such, she has been using the subject land as an access to reach her business place. According to the learned Senior Counsel, the petitioner is having easmentary right in respect of the property in question. The learned Senior Counsel further contended that it is not open to the local body to make use of the subject land by denying access to the building owned by the petitioner.

5. The learned Special Government Pleader appearing on behalf of the 4th respondent by producing a plan of the property contended that the petitioner is having a clear way to her commercial building. According to the learned Government Pleader, the property is situated adjacent to the bus stand and the same is necessary for construction of new shops. The learned Government Pleader contended that no right would accrue to the petitioner by using this land as an alternative way.

6. We have also heard the learned Government Pleader on behalf of the first respondent.

Analysis:-

7. The husband of the petitioner constructed a shop building on the land in S.No.62/1A1A, within the limits of Kaveripattinam Selection Grade Town Panchayat. He was doing automobile business till his death and thereafter, the business is being carried on by his children. It is the case of the petitioner that she has been using the land owned by the Kaveripattinam Selection Grade Town Panchayat, adjacent to the bus stand as an access. It is the further case of the petitioner that her customers have been using the said land to reach the shop without any disturbance for the last 15 years.

8. The petitioner earlier filed a Writ Petition in W.P.No.10722 of 2015 to direct the Kaveripattinam Selection Grade Town Panchayat, to permit her to continue to use the existing access, without any disturbance. The said Writ Petition was disposed of by a learned Single Judge of this Court with a direction to the Town Panchayat to consider and dispose of the matter on merits.

9. The representation was considered on merits by the local body. The fourth respondent rejected the request of the petitioner to use the land owned by the local body as an access to her business place. The order dated 22 June 2015 on the file of Executive Officer, Kaveripattinam Selection Grade Town Panchayat, was challenged in W.P.No.21667 of 2015. The learned Single Judge considered the contentions raised by the petitioner and having found that she has no right to direct the respondents to permit her to use the property, dismissed the Writ Petition. The order has become final.

10. The Executive Officer, Kaveripattinam Selection Grade Town Panchayat, thereafter issued a notice to the petitioner to remove the encroachment within a period of three days. The said notice is challenged in this Writ Petition.

11. The contentions raised by the petitioner with respect to her right to retain the land has already been rejected by this Court in its order dated 21 July 2015 in W.P.No.21667 of 2015. The order impugned in this Writ Petition is only a consequential notice pursuant to the action taken by the local body earlier, which was challenged in W.P.No.21667 of 2015. The petitioner now seeks to re-agitate the entire matter, which has attained finality.

12. The primary contention of the petitioner is that she has been making use of the land in question as an access to reach her shop building. The representation of the petitioner dated 6 April 2015 which is available on record, very clearly shows that there is a street behind her property. According to the petitioner, the street is too narrow and as such, she is not in a position to bring goods to her shop.

13. It is not the lookout of the local Panchayat to provide a motorable road to the petitioner. In case the petitioner wanted to do business, it is her duty to purchase a property having sufficient road access. The petitioner is claiming easmentary right. The claim on the basis of easmentary right is not legally sustainable in view of the fact that the petitioner is having an alternative way. In fact, the street behind her property is the direct access to her shop. The land owned by the Corporation was vacant for some time. The petitioner made use of the said land as an alternative access. Such usage would not give her a right to claim easmentary right. There is no element of easment or easment of necessity in this matter. Similarly, there is no prescriptive right involved in this matter.

14. The Executive Officer made it very clear that the local body is in the process of reconstructing the shops. The land which is the subject matter of this litigation is required for a public purpose. The fact that the petitioner is not in a position to take lorry to her shop through the street behind her property cannot be a reason to permit her to use public property. It is not the responsibility of the local body to provide road facility to a private building. Before constructing building, the landowner must make provision for access through the land owned by him/her to reach the main road. We are therefore of the view that there is absolutely no merit in the contention taken by the petitioner. In short, the petitioner has no manner of right to make use of the land owned by the panchayat.

15. The land in question is adjacent to the bus stand. Such a prime land cannot be earmarked for giving access to a private person to reach her commercial building. The local body is having every right to make use of its property in a most profitable manner and in larger public interest.

16. The petitioner is given one week time from today to comply with the direction as contained in the notice dated 22 June 2015. In case the petitioner fails to remove the encroachment as indicated in the notice, it is open to the Executive Officer, Kaveripattinam Selection Grade Town Panchayat, to take further action to close the way in question and use the land for public purpose. In short, status quo shall be maintained for a period of one week from today.

17. In the upshot, we dismiss the Writ Petition. No costs. Consequently, M.P.Nos.1 and 2 of 2015 are dismissed.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

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To

1 The District Collector
Krishnagiri District Krishnagiri.

2 The Superintendent of Police
Krishnagiri District Krishnagiri.

3 The Assistant Director of Town
Panchayats Krishnagiri.

4 The Executive Officer
Kaveripattinam Selection Grade
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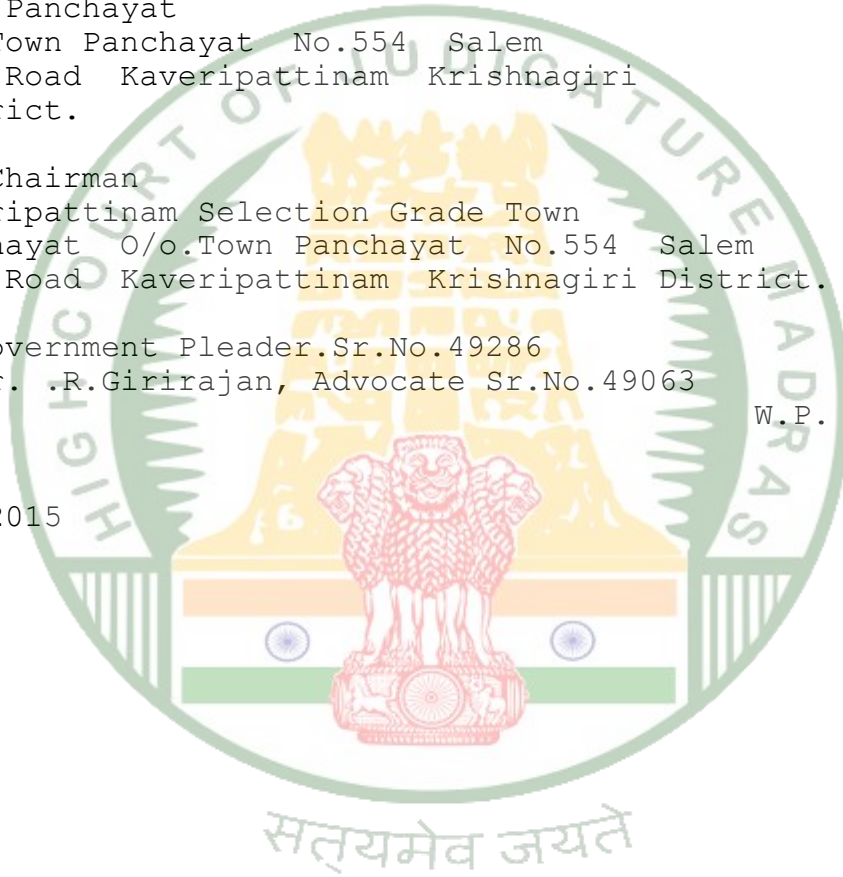
5 The Chairman
Kaveripattinam Selection Grade Town
Panchayat O/o.Town Panchayat No.554 Salem
Main Road Kaveripattinam Krishnagiri District.

1 cc to Government Pleader.Sr.No.49286

1 cc to Mr. .R.Girirajan, Advocate Sr.No.49063

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