

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2015

CORAM

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HON'BLE MR.JUSTICE P.R.SHIVAKUMAR

W.A.NO. 1626 of 2012

And

M.P.No.1 of 2012

1. The Panchayat Union Councilor
Chennakuppam P.K.Puram Ward,
K.V.Kuppam Panchayat Union,
Vellore District.
2. Chenna Kuppam Village Panchayat
rep. by its President K.V.Kuppam
Panchayat Union, Vellore District.
3. K.Mohanraj Appellants

Vs.

1. The District Collector,
Vellore.
2. The District Revenue Officer,
Vellore District.
3. Tahsildar, Katpadi Taluk,
Vellore District.
4. The Revenue Divisional Officer,
Vellore.
5. The Block Development Officer,
K.V.Kuppam Panchayat Union,
Vellore District.

6. N.R.Selvaraj ... Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent Appeal, against the order made in W.P.No.3972 of 2012(Petition filed under Article 226 of the Constitution of India praying for a writ of

Mandamus, forbearing the respondents from laying the road on petitioners patta lands bearing Chennankuppam Dry S. Nos. 316/1-B and 319/5-B extent of 1 acre 60 cents situated in Katpadi Taluk Vellore District without following the due process of law. as passed by His Lordship Mr.Justice Vinod K.Sharma dated 06.07.2012 in so far as negating the contention of the writ appellants/R4 to R6 with regard to 10 feet existing mud road pass through the land of writ petition .

Petition filed under Article 226 of the Constitution of India praying for a writ of Mandamus, forbearing the respondents from laying the road on petitioners patta lands bearing Chennankuppam Dry S. Nos. 316/1-B and 319/5-B extent of 1 acre 60 cents situated in Katpadi Taluk Vellore District without following the due process of law.

For Appellant ... Mr.V.Ayyadurai for
M/s Karan & Uday
For Respondents-1to5 ... Mr.R.Ravichandran, AGP
For 6th Respondent ... Mr.T.P.Manoharan for
Mr.M.P.Jayaprakash.

JUDGMENT

(Judgment of the Court was made by Justice V.Ramasubramanian)

The Writ Appeal arises out of an order passed by the learned Judge, closing the writ petition as infructuous, but making an observation in the penultimate paragraph of the order.

2. Heard Mr.V.Ayyadurai, learned counsel for the appellants, Mr.R.Ravichandran, learned Additional Government Pleader appearing for the official respondents and Mr.T.P.Manoharan, learned counsel appearing for the 6th respondent.

3. The 6th respondent in this appeal filed a writ petition in W.P.No.3972 of 2012 seeking the issue of a writ of mandamus to forbear the appellants herein as well as the revenue authorities from laying a road on his patta land. When the writ petition came up for hearing, it was stated on behalf of the District Revenue Administration that the action taken by the Panchayat Union on the basis of a resolution passed by them, could not be proceeded in view of the cancellation of the resolution by the District Collector. Therefore, observing that the impugned action of the Panchayat Union taken on the basis of a resolution passed by the Panchayat Union had already been cancelled by the District Collector, the learned Judge disposed of the writ petition as infructuous. However, the learned Judge reserved the right to the appellants, to challenge the order of the District Collector.

4. The learned Judge also reserved the rights of any member of public, to establish in a Civil Court, if they make a claim for a right of easement. While doing so, the learned Judge rejected the right of the appellants, to claim the right of passage over the patta land of the 6th respondent herein. It is against this observation in the last line of paragraph 8 of the impugned order that the appellants have come up with the above appeal.

5. There is no dispute about the fact that the land in question belongs to the 6th respondent and that he holds a patta. The Panchayat Union appears to have passed a resolution, to lay a pucca road, in a portion of the said land. Aggrieved by the action of the Panchayat Union, the 6th respondent came up with a writ petition. In the meantime, the resolution of the Panchayat Union got cancelled by the District Collector who happens to be the Inspector of Panchayats under the Tamil Nadu Panchayats Act, 1994. Therefore, the learned Judge was right in closing the writ petition as having become infructuous.

6. In so far as the observation made by the learned Judge in para 8 of the impugned order is concerned, all that the learned Judge has said is that if the members of the public claim any easmentary right, it is for them to go to the Civil Court. The Panchayat Union and the elected Councillor, cannot seek to exercise such an easmentary right on behalf of the public either by way of any resolution or by any other method. Therefore, the observation was also justified. Consequently, we find no merits in the writ appeal. Hence, it is dismissed. The Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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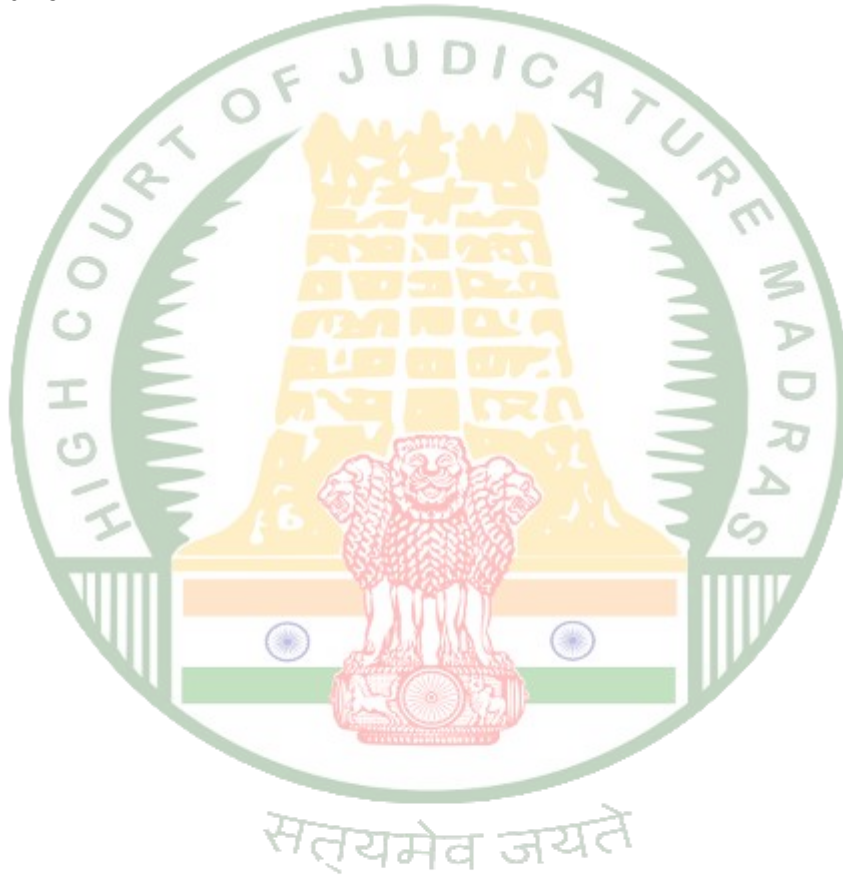
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5. The Block Development Officer, K.V.Kuppam Panchayat Union,
Vellore District.

1 cc to Mr.M.P.Jayaprakash. ,Advocate, SR.No.5526
1 cc to Mr.M/s Karan & Uday ,Advocate, SR.No.5226
1 cc to Government Pleader,Sr.No5210

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