

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.6.2016

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

Writ Petition No.19967 of 2015

I.Magheswari .. Petitioner
Vs.

1. The District Collector
Villupuram
Villupuram District.
2. The Revenue Divisional Officer
Villupuram
Villupuram District.
3. The Municipal Commissioner
Villupuram.
4. N.Arumugham ... Respondents

Petition under Article 226 of the Constitution of India praying for a writ of Mandamus directing the first respondent to take immediate action on the petition submitted by the petitioner on 08.01.2015 based on the communication of the second respondent to the third respondent in Na.Ka.A2/1868/2014 dated 13.11.2014 to clear the common pathway.

For Petitioner : Mr.V.Balu

For Respondents 1 & 2: Mr.P.S.Sivashanmugasundaram
Spl. Govt. Pleader

For Respondent-3 : Mr.P.Srinivas

O R D E R

(Made by Huluvadi G.Ramesh,J)

The petitioner seeks a writ of Mandamus directing the first respondent to take immediate action on the petition submitted by

the petitioner on 08.01.2015, based on the communication of the second respondent to the third respondent in Na.Ka.A2/1868/2014 dated 13.11.2014 to clear the common pathway.

2. The petitioner is residing at No.18, Sivan Padai Street, Villupuram, Villupuram District. The petitioner and some neighbours have put up construction and residing in the said place for many years. They have valid documents. In the said place, there is a common pathway running about 9 feet breadth and the same is used by the petitioner and by all the people in that area. The said common pathway has been blocked illegally by the fourth respondent on the ground that it belongs to him, though he had no valid documents to prove the same. Hence, the petitioner and others made a representation to the respondents 2 and 3 and also paid necessary fee on 01.9.2014, to measure the disputed area.

3. On 12.10.2014, the second respondent, after enquiry, directed the Surveyor to conduct inspection and to submit a report. Pursuant to the same, the Surveyor submitted a report stating that the disputed area is a common pathway and was blocked by the fourth respondent illegally. Hence, on 13.11.2014, the second respondent directed the third respondent to remove the illegal encroachment made by the fourth respondent and to submit a report. However, no action was taken to remove the encroachment. Hence, the petitioner and others sent a legal notice to the third respondent on 08.5.2015 and requested to remove the alleged encroachment. But, till now, no action was taken by the respondents 1 to 3 to remove the encroachment. Therefore, the petitioner has come up with this writ petition.

4. Counter affidavits have been filed by the respondents 2 and 3. It is stated in the counter affidavits that the common pathway in dispute is a private land and therefore, the third respondent cannot interfere with the said land. On the other hand, it was stated to be a common pathway as per the report of the Surveyor.

5. In the facts and circumstances of the case, the direction sought by the petitioner to remove the encroachment and to treat the land in dispute as common pathway, as per the report of the surveyor, cannot be granted, as the disputed questions of fact cannot be adjudicated by this Court and the same has to be decided by the civil Court.

6. In view of the above, the writ petition is disposed of, directing the petitioner to approach the civil Court for appropriate relief, if necessary, by impleading the respondents as parties to the suit. There shall be no order as to costs. Consequently, M.P.No.1 of 2015 is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1. The District Collector
Villupuram, Villupuram District.
2. The Revenue Divisional Officer
Villupuram, Villupuram District.
3. The Municipal Commissioner
Villupuram.

+1cc to Mr.V.Balu, Advocate Sr.31528
+1cc to Mr.P.Srinivas, Advocate sr.31222

W.P.No.19967 of 2015.

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srg 23/06/2016

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