



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.03.2016

CORAM

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THE HONOURABLE **MR. JUSTICE B. RAJENDRAN**

W.P(MD) .No.14091 of 2013

and

M.P. (MD) .No.1 of 2013

E.Gurusamy

...Petitioner

Vs.

1.The District Collector,
Madurai,
Madurai District.

2.The Commissioner of Panchayat,
Melur Panchayat Union,
Melur,
Madurai District.

3.The President,
Vellalore Village Panchayat,
Melur Taluk,
Madurai District.

4.The Superintendent of Police,
Madurai District,
Madurai.

5.The Inspector of Police,
Melur,
Madurai District.

6.K.Muthaiah
7.A.Krishnan
8.R.Ravindran
9.M.Sethu

... Respondents

Writ Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Mandamus, directing the respondents 1 to 3 to stop the illegal laying of road on the petitioner's private patta land comprised in Resurvey Nos.379/13 and 363/2 situated in Melavalasai, Vellalore Village, Melur Taluk, Madurai District based on the petitioner's representation, dated 12.08.2013.

For petitioner : Mr.K.Mahendran

For Respondents : Mr.D.Muruganandham
Additional Government Pleader

**ORDER**

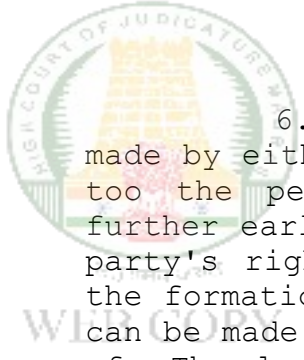
The writ petition has been filed for the relief of direction to the respondents 1 to 3 to stop the illegal laying of road on the petitioner's private patta land comprised in Resurvey Nos.379/13 and 363/2, situated in Melavalasai, Vellalore Village, Melur Taluk, Madurai District, based on the petitioner's representation, dated 12.08.2013.

2.The grievance of the petitioner is, as per the earlier order in the writ appeal in W.A.No.293 of 2007, if the petitioner (appellant in the Writ Appeal) is able to establish his title of the property by placing necessary materials and if any adverse order is passed by the first respondent, it is well open to the petitioner to approach the appropriate forum with regard to his claim, with reference to the documents and other materials, and if the petitioner is able to prove his title of the property, the action of the respondents is against law. But so far, the respondents have not passed any orders in respect of the documents produced by the petitioner.

3. But the learned Government Pleader would contend that earlier, the co-owner of the suit property, one M.Chinna Karuppan had filed a suit in O.S.No.5 of 1998 for permanent injunction, on the file of the District Munsif Court, Melur, as against the District Collector and the Commissioner of Melur Panchayat Union, against the formation of the road and the same was dismissed as early as on 14.12.1998.

4. From the records, it is seen that against the said order of dismissal, dated 14.12.1998, the petitioner filed an appeal in A.S.No.22 of 1999 before the Principal Sub Court, Madurai. That was also dismissed on 31.08.1999. Thereafter the petitioner himself filed writ petition in W.P.(MD)No.4179 of 2007, as if the road has to be laid only then and sought for an injunction. That Writ Petition was also dismissed on 22.06.2007. Being aggrieved by the same, the petitioner preferred a writ appeal in W.A.(MD)No.293 of 2007, wherein this court dismissed the writ appeal on 24.11.2008, of course, with an observation that the petitioner can produce the documents to show the title of the property and the authorities did not pass any order till date. But fact remains that according to the Government Pleader, the road was formed long back. In this connection he would also point out that in the typeset of papers, the petitioner himself fairly produced the above said facts in the plaint in O.S.No.130 of 2010. The said Suit is pending on the file of the learned District Munsif, Melur, filed in a representative capacity by the villagers, as against the petitioner and the other co-owner, for the declaration that the suit property is the Melur Panchayat Union Public Block Topping Road, which is under the use and enjoyment of the plaintiffs and the villagers for ingress and egress to their village of Melavalasai Hamlet of Vellalore, Melur Taluk.

5. Therefore the party's right can be agitated and declared only in a civil Court as already stated by this Court in the writ appeal in W.A. (MD).No.293 of 2007 and the contention raised by the petitioner also could be considered. In this connection, the learned counsel for the petitioner would clearly stated that he has contended everything, including the formation of the road earlier.



6. Taking in to consideration of the submissions and contentions made by either side, since already a declaration suit is pending and that too the petitioner and the other co-owner were already as a party, further earlier, this Court in the writ appeal also has directed that the party's right has to be decided only by the civil Court, as to whether the formation of the road itself was earlier or later, the Collector also can be made as a party in the said Suit and then the suit can be disposed of. The learned District Munsif, Melur will independently consider the matter on merits and pass order in accordance with law, without being influenced by the observations made earlier, and will decide on the question of title of the suit property and the production of the documents by the petitioner. The first respondent, the District Collector, Madurai District shall be implead as a party in the Suit.

7. With the above direction, this Writ Petition is disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

/True copy/

Sub Assistant Registrar

To

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Madurai,
Madurai District.

2.The Commissioner of Panchayat,
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+1 CC to the Special Government Pleader, SR No.13561

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PJL

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