

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2017

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN
And
THE HON'BLE MR.JUSTICE N.SESHASAYEE

W.P.No.12214 of 2016

M.Sitthuraju .. Petitioner

vs.

1. The District Collector,
Salem District - 636 001.
2. The Block Development Officer,
Veerapandi Panchayat Union,
Salem District.
3. The President,
Aariya Goundampatty Village Panchayat,
Aariya Goundampatty, Aiyyanna Valavu,
Murugapatti (PO), Sivathaapuram Via,
Salem District.
4. The Village Administrative Officer,
No.3, Mooduthurai Group,
Salem West, Salem District.
5. G.Suresh
6. P.Gunasekaran

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the 1st respondent to take appropriate action to remove the encroachments made by the respondents 5 and 6 in the common pathway from Sithar Kovil - Salem Steel Plant Main Road to Petitioner's Aiyyanna Valavu village at Aariya Goundan Village Panchayat, Veerapandi Village Union in Salem District on the basis of petitioner's representation dated 16.02.2016 within a time frame fixed by this Court.

For Petitioner : Mr.C.Rajaguru

For Respondents : Mr.M.Elumalai,
Government Advocate for R1 to R4

Mr.G.Ilanthiraiyan
for M/s.Sai Bharath Ilan
for R5 & R6

O R D E R

(Order of the Court was made by M.SATHYANARAYANAN, J.)

The petitioner, in the affidavit filed in support of this writ petition, would aver that he is a weaver and in his native place, namely Aiyanna Valavu, Aariyagoundampatty, there are about 150 family residing and since the date of his forefather, 15 feet common pathway is being used to reach the village from Sitthar Kovil to Salem Steel Plant main road by foot, bicycles or bullock carts etc., and it is the only way to reach his village. It is further stated by the petitioner that originally a 12 feet tar road was laid and thereafter it got damaged and despite very many representations to relay the road, no action has been taken by the concerned officials. It is also stated by the petitioner that the respondents 5 and 6, who are the owners of the lands adjoining the common road, encroached upon the road area and started putting up construction and in this regard, the petitioner has also submitted a representation dated 16.02.2016 and inspite of receipt and acknowledgment, no orders have been passed and hence, came forward to file this writ petition.

2. Mr.C.Rajaguru, learned counsel appearing for the petitioner would submit that since the respondents 5 and 6 have no right whatsoever over the common pathway and they have also encroached upon the road, the villagers are finding it extremely difficult to have access to Sitthar Koil and in case of emergency also, the petitioner cannot enter and therefore, prays for appropriate orders.

3. Per contra, Mr.G.Ilanthiraiyan, learned counsel appearing for the respondents 5 and 6 has drawn the attention of this Court to the counter affidavit as well as the typed set of documents and would submit that on an earlier occasion, one Thiruvallurvar Narpani Mandram, represented by its President Mr.N.Aiyappan, filed W.P.No.1686 of 2016, praying for a Writ of Mandamus directing the respondents 1 to 4 to lay a road/pathway from Sitthar Kovil, Salem Steel Plant Main Road to Petitioner's Aiyanna valavu Village, Aariya Goundan Village Panchayat, Veerapandi Village Union, Salem District on the basis of his

representation dated 27.07.2015 and the fifth respondent has filed a counter affidavit in the said writ petition and this Court, taking note of filing of the Suit in O.S.No.3/2014, which was later re-numbered as O.S.No.418 of 2014 on the file of the II Additional District Munsif Court at Salem, has directed the petitioner to workout his remedy in the pending Civil Suit and though the Counsel for the petitioner in the said writ petition as well as the Counsel on record in the present writ petition is same, the said material aspect has been deliberately burked. It is the further submission of the learned counsel appearing for the fifth respondent that in fact the petitioner along with others had encroached upon patta lands which incidentally led to the filing of Civil Suits and also would state that the fifth respondent along with the sixth respondent are the owners of the lands in S.Nos.84/10C and 84/10K and as such, the petitioner had abused the process of law by getting some orders for the purpose of using the same in the pending Civil Suit along with other persons in O.S.No.418 of 2014 on the file of the II Additional District Munsif Court at Salem.

4. This Court has considered the rival submissions and also perused the entire materials placed before it.

5. A perusal of the affidavit filed in W.P.No.1686 of 2016, filed by Thiruvallurvar Narpani Mandram, as well as the affidavit filed in the present writ petition would clearly state that the first four paragraphs are the verbatim reproduction. It is the submission of the learned counsel appearing for the petitioner that subsequent to the disposal of W.P.No.1686 of 2016, the private respondents had encroached upon the lands in Door No.9F, New S.No.105 and Old S.No.87 and the same has also been found in the representation dated 16.06.2016.

6. In the typed set of documents filed by the fifth respondent along with the counter, 4 Civil Suits are pending viz., O.S.No.830/2011, O.S.No.811/2013, O.S.No.920/2013 and O.S.No.418 of 2014. In O.S.No.830/2011, on the file of the 1st Additional District Munsif Court, Salem, the present petitioner is the sixth plaintiff and however, the said fact has been denied by the learned counsel appearing for the petitioner. Be that as it may, the Suit property is comprised in S.F.No.84/10A in Ariyangoundampatty Village, Salem Taluk. O.S.No.811/2013, on the file of the District Munsif Court, Salem was filed by one M.Siddhan against the Block Development Officer, Veerapandi Panchayat Union, Salem Taluk wherein the Suit Property is in S.F.No.87/5. O.S.No.920/2013, on the file of the District Munsif Court, Salem was filed by Mr.V.Theivarasu against the Arigoundampatti Tanchayat as well as the Block Development Officer, Veerapandi Panchayat Union and the Suit property is in

respect of S.F.No.105/38 [Old Natham Survey No.87/5 (Part)]. O.S.No.418 of 2014 was filed by the respondents 5 and 6 herein against the President of the local body and the Block Development Officer, praying for the relief of Permanent Injunction and other consequential reliefs the Suit property therein is in S.F.No.84/10C.

7. The learned Single Judge of this Court, while disposing of W.P.No.1686 of 2016, filed by Thiruvallurvar Narpani Mandram, wherein the respondents 5 and 6 therein are the respondents 5 and 6 herein, has directed the petitioner herein to workout his remedy in the pending Civil Suit in O.S.No.3/2014, renumbered as O.S.No.418/2014 on the file of the District Munsif Court, Salem. The counter affidavit of the fifth respondent would also disclose that the points urged by the learned counsel appearing for the petitioner revolve around disputed question of fact.

8. This Court, in the earlier paragraphs, pointed out that some portion of the affidavit filed in support of the present writ petition, is the verbatim reproduction of the affidavit filed in W.P.No.1686 of 2016, filed by Thiruvallurvar Narpani Mandram and the present Counsel is the Counsel on record for the said petitioner also and however, filing of the said writ petition and the result of the same have not been disclosed in the affidavit filed in support of the present writ petition. Since the points urged by the learned counsel appearing for the petitioner involve disputed question of fact, this Court is of the view that the petitioner is not entitled to any remedy in this writ petition.

9. In the result, this Writ Petition is dismissed. However, the petitioner is at liberty to workout his remedy in accordance with law before the competent civil forum. No costs.

Sd/-

Deputy Registrar (J)

//True Copy//

Sub Assistant Registrar

jvm

To

1. The District Collector,
Salem District - 636 001.
2. The Block Development Officer,
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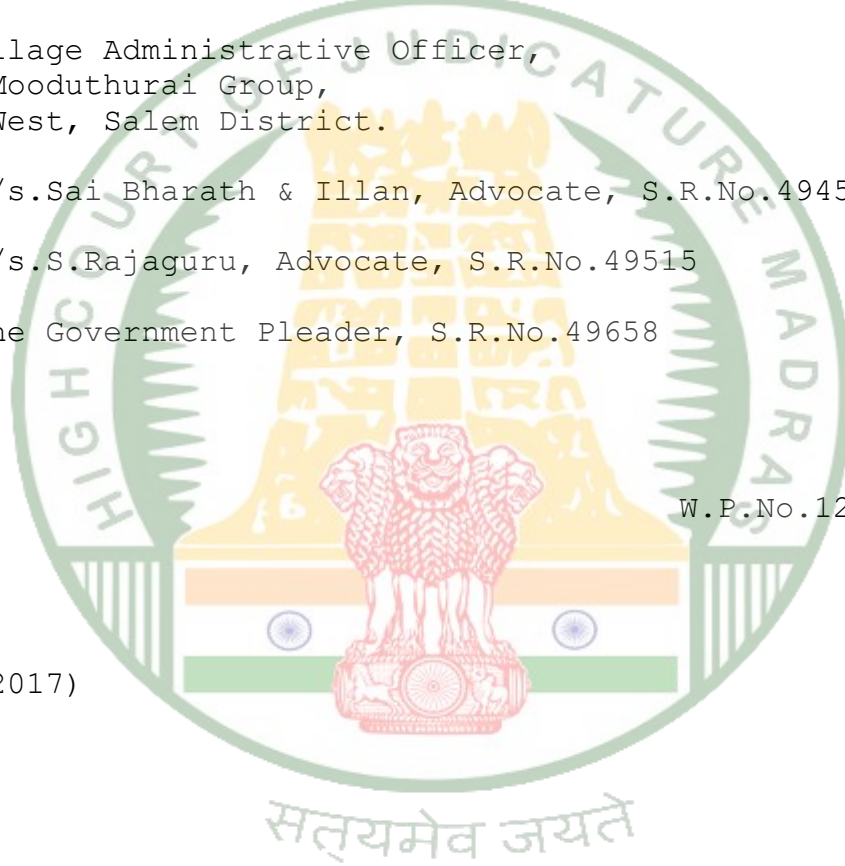
+1cc to M/s.Sai Bharath & Illan, Advocate, S.R.No.49455

+1cc to M/s.S.Rajaguru, Advocate, S.R.No.49515

+1cc to the Government Pleader, S.R.No.49658

W.P.No.12214 of 2016

SKS (CO)
CU(16/08/2017)



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