

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2017

CORAM :

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No. 22962 of 2013
and
M.P. Nos. 1 & 2 of 2013
and
WMP No.742 of 2017

K. Pankajam

..Petitioner

Vs.

1. The District Collector
Salem District.
2. The Revenue Divisional Officer
Revenue Divisional Office
Sankari Taluk
Salem District.
3. The Deputy Superintendent of Police
Sankari Taluk
Salem District.
4. Mr. M. Rathinasamy
Revenue Divisional Office
Sankari Taluk
Salem District.
5. Mr. Ramasamy
The Deputy Superintendent of Police
Sankari Taluk
Salem District.
6. C. Rajendran
S/o. Chinnusamy
Gorikaddu
Devanagoundanoor Village
Kuppanoor Post
Sankari Taluk
Salem District.

7. R. Vardharaju
S/o. Rangasamy
Mandapathukadu
Devanagoundanoor Village
Kuppanoor Post
Sankari Taluk
Salem District.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, forbearing the respondents 4 to 7 herein, their subordinates, men and agents, from in any manner forming a road in the patta lands of the petitioner measuring an extent of 80 cents situated in S.No. 661/6B of Devanagoundanoor Village, Sankari Taluk, Salem District except by due process of law and pass further orders.

For Petitioner : Mr. G. Arul Murugan

For Respondent : Mr. S. Diwakar,
Spl. Govt. Pleader for R1 to R3

Mr. V. Ayyadurai for R6 & R7

No Appearance for R4 and R5

O R D E R

This writ petition has been filed seeking to forbear the respondents 4 to 7 herein, their subordinates, men and agents, from in any manner, forming a road in the patta lands of the petitioner measuring an extent of 80 cents, situated in S.No. 661/6B of Devanagoundanoor Village, Kuppanoor Post, Sankari Taluk, Salem District except by due process of law.

2. Learned counsel for the petitioner would submit that the petitioner is the absolute owner of the subject property, purchased vide a registered sale deed dated 13.03.1989 and she is in possession of the property. The patta and all the other Revenue records have been issued in the name of the petitioner and she is paying the taxes till date. Originally, the petitioner was possessing 2.37 acres in Survey No.661/6 and for formation of NH-47, the Government acquired 1.57 acres of the land and the balance 80 cents has been sub-divided as S.No. 661/6B. The petitioner fenced her property leaving 3 foot pathway, for the use of public to reach Madheswaran Temple. Whiles, the 6th and 7th respondents, with the help of 4th and 5th

respondents, is attempting to broaden the 3ft pathway into a 16 ft. road, in the petitioner's property. In this regard, 6th and 7th respondent filed a petition before the 4th respondent, under section 133 of CrPC, seeking to direct the petitioner to remove the iron gates and fencing. Learned counsel further stated that the 6th and 7th respondents are attempting to trespass into the property, illegally. Since no action has been taken by the 1st respondent on the petitioner's representations, the petitioner is constrained to approach this Court.

3. Learned counsel for the 6th and 7th respondents, in paragraph 15 of their counter, have stated that the existing public cart track is shown as a foot path in the revenue records but it lies as a ground for the past more than 50 years. The public cart tract has a minimum 15 ft. width wide, which runs from the south side of the NH service road upto the Madeshwaran temple. This is the disputed portion of the existing public cart track, which the petitioner has falsely claim to be a 3ft wide foot path. It was further submitted that for a long time, the public have been using the 15 ft cart track to reach the Madeshwaran temple. Eventhough the revenue records disclose that it is a 3ft pathway, actually it has been used as a 15 ft. cart track.

4. Learned Special Government Pleader, relying on the counter filed by the 2nd respondent would submit that the 3ft foot path left by the petitioner from the service road is being used only by the petitioner and her family members to reach her house and the general public are not allowed to pass through the same to reach the Madeswaran temple. The problem arose only when the petitioner put up an iron gate and locked it. It is further stated that the foot path as per the revenue records is on the eastern side and the 3 ft. pathway said to have been left open by the petitioner is on the western side, near her house. Learned counsel further submitted that since the obstruction caused by the petitioner was removed by the 6th and 7th respondent along with the other general public for visiting the temple, there is no necessity for passing any orders on the petition filed under Section 133 of CrPC, by the 2nd respondent. Further, it is submitted that the contention of the petitioner cannot be countenanced since there is no proposal to lay any road on the patta land of the petitioner by the 2nd respondent.

5. As contended by the learned counsel for the petitioner, the land in Survey No.661/6B belongs to the petitioner and he has also produced records before this Court, to show that the petitioner is in possession and enjoyment of the subject property. Admittedly, in the aforesaid land, there is a 3ft. pathway, to reach the Madeswaran temple. According to

the petitioner, the dispute is only with regard to the existence of 15 ft. cart track. As contented by learned counsel for the respondents, eventhough the revenue records reflect that there was only a 3 ft. pathway, in reality the public has been using the said pathway as 15 ft., cart track. Therefore, the 6th and 7th respondents and the general public has got the right to use the entire 15 ft. cart track to reach the temple during the festival season. Since, there is a disputed fact between the petitioner and the 6th & 7th respondents, this Court cannot decide under Article 226 of Constitution of India. If at all aggrieved, the parties concerned have to approach the Civil forum to work out their remedy for the disputed pathway, in the aforesaid property.

6. At this stage, learned counsel for the respondents requested this Court to follow the earlier interim orders passed by this Court on 06.01.2016, for permitting the general public to use the pathway and go to the Madeswaran temple for this year also, since the Pongal festival commences from 14th to 18th January 2017. In the light of the earlier interim orders passed by this Court and since the petitioner may not have any objection, this Court grants permission for the general public to use the 15 ft. pathway, to have darshan in the temple during Pongal, without prejudice to the right of the petitioner.

7. Accordingly, the writ petition is dismissed, with a direction to the parties to approach the Civil Court for their relief, as observed by this Court in the case of Kuppuswami Nainar Vs. The District Revenue Officer & Ors. Reported in (1995) 1 MLJ 426, . Consequently, the connected M.Ps are closed. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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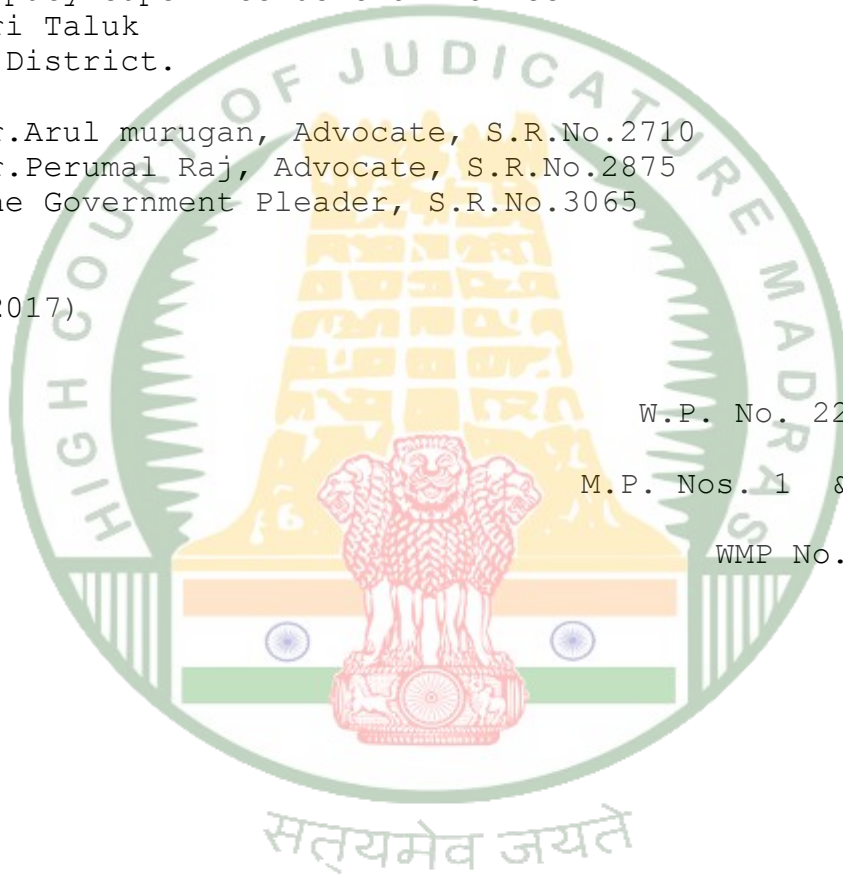
To

1. The District Collector
Salem District.
2. The Revenue Divisional Officer
Revenue Divisional Office
Sankari Taluk
Salem District.
3. The Deputy Superintendent of Police
Sankari Taluk
Salem District.

+1cc to Mr.Arul murugan, Advocate, S.R.No.2710
+1cc to Mr.Perumal Raj, Advocate, S.R.No.2875
+1cc to the Government Pleader, S.R.No.3065

RSI (CO)
RS(08/03/2017)

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