



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

AND

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD)No.7842 of 2014

and

M.P(MD)No.1 of 2014

Suliyar

: Petitioner

vs.

1. The District Collector,
Madurai District,
Madurai.
2. The Tahsildar,
Vadippatti Taluk Office,
Vadippatti, Madurai District.
3. The Executive Officer,
Vadippatti Upgraded Panchayat Office,
Vadipatti, Madurai District.
- 4.Jothi
- 5.Muthu
- 6.Kaliyappan
- 7.Sonai
- 8.Sadaiyandi

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying this Court for issuance of a Writ of Mandamus directing the Respondents 1 to 3 to remove the encroachments of the Respondents 4 to 8 made in public pathway comprising in Survey No.270/6, Kaliyamman Temple Street, 1st Ward, Thathampatti Village, Vadippatti Taluk, Madurai District by considering the Petitioner's representation dated 19.02.2014 within the time limit that may be stipulated by this Court.

For Petitioner

: Mr.M.S.Jeyakarthik

For R-1 & R-2

: Mr.M.Govindan,

Special Government Pleader

For R-3

: Mr.G.Muthukannan

For R-4 to R-8

: Mr.J.Jeyakumaran



O R D E R

[Order of the Court was made by **M.VENUGOPAL, J.**]

The Petitioner has filed the present Writ Petition praying for passing of an order by this Court in directing Respondent Nos.1 to 3 to remove the encroachments made by Respondent Nos.4 to 8 in public a pathway in Survey No.270/6, Kaliyamman Temple Street, 1st Ward, Thathampatti Village, Vadippatti Taluk, Madurai District by considering the Petitioner's representation dated 19.02.2014 within a stipulated time.

2. Heard both sides. No counter-affidavit is filed on behalf of the Respondents.

3. According to the Petitioner, he owns a house comprised in Survey No.270/17 in Thathampatti Village and adjacent to his house there are various houses situated and for all of them, Survey No.270/6 is the only pathway for their ingress egress. Further, in all Revenue Records, the land in Survey No.270/6 is marked as public pathway and there is no other way to reach the Petitioner's house except by means of the aforesaid survey number and for several decades, they have been using the afore stated Survey No.270/6 as pathway for their ingress and egress.

4. The specific case of the Petitioner is that adjacent to the aforesaid pathway, Respondent Nos.4 to 8 had constructed their houses in their own lands and are residing now in their respective houses together with their family members. Taking advantage of the same, Respondent Nos.4 to 8 using the nearby aforesaid pathway in Survey No.270/6 for storing their wooden things by erecting Wall as well as trellis across the above pathway. Due to the occupation of Respondent Nos.4 to 8 over the public pathway, the Petitioner family's ingress and egress is being affected and also the public pathway could not be used for reaching their domicile.

5. The prime grievance of the Petitioner is that the land in Survey No.270/6 is a public pathway, but without taking into account, Respondent Nos.4 to 8 had unlawfully encroached the pathway for their personal usages and that, Respondent Nos.4 to 8 caused much hindrance to the way users, thereby the free flow of traffic is being affected. The Petitioner's son made a representation before Respondent Nos.1 to 3 seeking for removal of encroachment made by Respondent Nos.4 to 8 in respect of the pathway in Survey No.270/6 on 05.07.2013 and based on the said representation, the Third Respondent had asked the Second Respondent to survey and marked the disputed pathway. As a matter of fact, on 20.09.2013, the Second Respondent had surveyed the pathway and marked the land in Survey No.270/6 is a public pathway. The above Survey Report was also forwarded to the Third Respondent for appropriate further action.



6. It appears that no action was taken based on the representation of the Petitioner's son and hence, the Petitioner was forced to send a representation to Respondent Nos.1 to 3 on 19.02.2014 thereby requesting them to remove the encroachment of Respondent Nos.4 to 8 from the land in Survey No.270/6, which is earmarked as public pathway. But, for the past two years, the Petitioner's efforts requesting Respondent Nos.1 to 3 to take appropriate efforts for removal of encroachment had been ended vain and hence, the Petitioner has filed the present Writ Petition.

7. At this stage of hearing, the Learned Special Government Pleader appearing for Respondent Nos.1 to 3 brings to the notice of this Court that if time limit is prescribed by this Court, Respondent Nos.1 to 3 will look into the representation of the Petitioner dated 19.02.2014. The request made on the side of Respondent Nos.1 to 3 appears to be quite reasonable.

8. In view of the fact that the Petitioner's representation dated 19.02.2014 is pending as on date for consideration before the Second Respondent without any progression in the subject matter in issue, this Court, at this stage, without going into the merits of the matter and also not delving deep into the contents of the Petitioner's representation dated 19.02.2017, simpliciter, directs the Second Respondent to look into the representation of the Petitioner's dated 19.02.2014 and the earlier representation of the Petitioner's son dated 05.07.2013, within a period of two weeks from the date of receipt of a copy of this order. Thereafter, the Second Respondent is to pass a reasoned speaking order on merits within a period of four weeks thereafter, of course, after providing necessary opportunity to the Petitioner and others concerned (including Respondent Nos.4 to 8, since according to the Learned Counsel for the said Respondents, they had not encroached the pathway in question and further, they had constructed their houses only in the patta land).

9. It cannot be gainsaid that the Petitioner and Respondent Nos.4 to 8 are entitled to raise all the factual and legal pleas before the Second Respondent, who shall advert to the same at the time of passing final orders based on the representation of the Petitioner's son and the Petitioner dated 05.07.2013 and 19.02.2014 respectively, of course in the manner known to Law and in accordance with Law.

10. With the above said observation(s) and direction(s), the Writ Petition stands disposed of. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (RTI)

/True copy/

Sub Assistant Registrar



To

1. The District Collector,
Madurai District,
Madurai.

2. The Tahsildar,
Vadippatti Taluk Office,
Vadippatti,
Madurai District.

3. The Executive Officer,
Vadippatti Upgraded Panchayat Office,
Vadipatti,
Madurai District.

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No.84218

pm

MK/SV MMS/SAR-2/10.11.2017/4P/5C

ORDER MADE IN
W.P. (MD) No.7842 of 2014
27.10.2017