



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Dated : 01.09.2017

CORAM :
THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P (MD) No.16064 of 2017
and
W.M.P (MD) No.12744 of 2017

M.Paulraj ... Petitioner
Vs.

1.The District Collector,
Virudhunagar District,
Virudhunagar.

2.The District Revenue Officer,
Collectorate Building, Virudhunagar.

3.The Tahsildar, Tahsildar Office,
Virudhunagar.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records in respect of the proceedings of the third respondent in Na.Ka.A5/4440/2017, dated 30.06.2017 and quash the same as arbitrary, illegal, null and void and direct the respondents to Survey Plot Nos.11 and 12 in S.No.168/1 and 2A situated at Inam Reddiapatti, Virudhunagar and submit report in respect of encroachment on the road and remove the same in front of Plot No.7, 11 and 12.

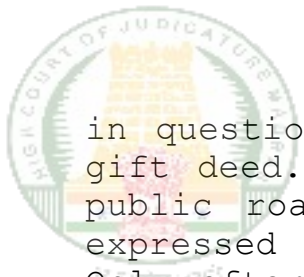
For Petitioner : Ms.P.Malini
For Respondents : Mr.T.S.Md.Mohideen,
Additional Government Pleader.

O R D E R

(Order of the Court was made by **G.R.SWAMINATHAN, J.**)

The writ petitioner is the owner of Plot No.15 in Survey No.168/1 and 2A in Inam Reddiapatti Panchayat, Virudhunagar District. There is a temple in Plot Nos.11 and 12. The allegation of the writ petitioner is that the subject temple is encroaching upon the 20 feet road. He therefore submitted a representation dated 21.07.2016.

2.The Tahsildar, Virudhunagar by the impugned communication dated 30.06.2017 has informed the writ petitioner that the street



in question has not been conveyed to panchayat in the form of a gift deed. Since the road in question has not been shown as a public road in the panchayat records, the third respondent has expressed his inability to remove the encroachment at present. Only after the road portion is handed over to the panchayat and the plots in question are approved, it is possible to remove the encroachment. This is the stand of the third respondent. Aggrieved by the said stand set out in the impugned communication dated 30.06.2017, the writ petitioner has approached this Court.

3. Heard the learned counsel for the parties.

4. The expression "public road" has been defined in Section 2 (28) of the Tamil Nadu Panchayats Act, 1994 as "any street, road, square, court, alley, passage, cart track, foot path or riding-path over which the public have a right of way, whether a thoroughfare or not". Section 131 contains the prohibition against obstructions in or over public roads etc. As per Section 125 of the Act, all public roads in any village (other than roads which are classified by the Government as National Highways or State Highways or as major district roads or as Panchayat Union roads) shall vest in the village panchayat. This being the statutory scheme, the third respondent will have to see if the 20 feet road referred to by the writ petitioner is a public road within the meaning of Section 2(28) of the Act.

5. This is the only relevant consideration. The third respondent has not approached the issue from this perspective. Instead the focus has been to see if the portion referred to by the writ petitioner has been gifted in favour of the panchayat.

6. Since the third respondent has misdirected himself in law, this Court quashes the communication impugned in the writ petition. The matter is remitted to the file of the third respondent with a direction to arrive at a finding if the road in question is a public road. If it is so, obstruction of a public road cannot be allowed. The third respondent has to necessarily take action in accordance with law for removing the encroachment in question.

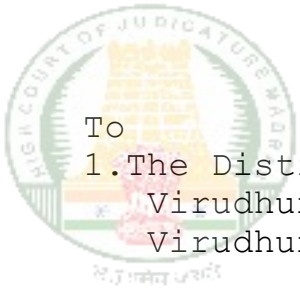
7. This writ petition is allowed as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar



To

1.The District Collector,
Virudhunagar District,
Virudhunagar.

2.The District Revenue Officer,
Collectorate Building, Virudhunagar.

3.The Tahsildar, Tahsildar Office,
Virudhunagar.

+1cc to M/s.P.MALINI,Advocate,SR. 76441

+1cc to M/S.Special Government Pleader,SR.76672

W.P (MD) No.16064 of 2017

and

W.M.P (MD) No.12744 of 2017

01.09.2017

SKM/ARUL

KK/SKN RSK/SAR 1/22.09.2017/ 3P- 6C