



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 21.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

W.P (MD) No.23908 of 2016

T.Nirmala

.. Petitioner

Vs.

1.The District Collector,
Kanyakumari at Nagercoil.

2.The Tahsildhar,
Agasteeswaram Taluk
at Nagercoil.

3.The Superintending Engineer (PWD),
Nagercoil.

4.The President,
Kaniakulam Panchayat,
Kaniakulam, Nagercoil.

5.Robinson,
Shairman,
Ponjesly College of Engineering,
Alamparai, Parvathipuram,
Kanyakumari District.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the respondent to remove the encroachment in the western and south western bunds of Karuppaikulikulam situated in Re.Sy.No.58/5, Kaniyakulam Village and restore 15 feet width pathway enabling the petitioner to access the agricultural land.

[Prayer is amended vide Order dated 07.03.2017 made in W.M.P (MD) No.2547 of 17].

For Petitioner

: Mr.K.P.Narayanakumar

For Respondents 1 to 4

: Mr.T.S.Mohammed Mohideen,
Additional Government Pleader.

For Respondent No.5

: Mr.S.Xavier Rajini

**ORDER**

[Order of the Court was made by **A.SELVAM, J.**]

This writ petition has been filed under Article 226 of the Constitution of India praying to direct the respondents 1 to 4 to remove encroachments which are in existence in Survey No.58/5 which has been classified as a tank in Kanikyakulam Village, by way of issuing a writ of mandamus.

2.The learned counsel appearing for the petitioner has contended to the effect that in Kaniyakulam Village, Survey No.58/5 has been classified as an irrigation tank, wherein the fifth respondent has made certain encroachments and for the purpose of removing the same, the present writ petition has been filed.

3.The learned counsel appearing for the fifth respondent has contended to the effect that the fifth respondent has not made any encroachment and the petitioner has filed the present writ petition unnecessarily and therefore the same deserves to be dismissed

4.On the basis of divergent submissions made on either side, this Court has perused the documents filed on the side of the petitioner. In fact, on the side of the petitioner, Field Measurement Book in respect of Survey No.58 has been filed, wherein it has been clearly stated to the effect that Survey No.58/5 has been classified as irrigation tank.

5.Considering the classification of Survey No.58/5 and also considering the main contention putforth on the side of the petitioner, this Court is inclined to pass the following order.

6.In fine, this writ petition is allowed without costs and the respondents 2 and 3 are directed to conduct proper survey in respect of Survey No.58/5, Kaniyakulam Village, Agasteeswaram Taluk, Kanyakumari District and if there is any encroachment alleged to have been made by the fifth respondent, directed to remove the same under due process of law within a period of two months.

Sd/-

Assistant Registrar(Records)

/True copy/



To

1.The District Collector,
Kanyakumari at Nagercoil.

2.The Tahsildhar,
Agasteeswaram Taluk
at Nagercoil.

3.The Superintending Engineer (PWD),
Nagercoil.

4.The President,
Kaniakulam Panchayat,
Kaniakulam, Nagercoil.

+1cc to Mr.S.Xavier Rajini,Advocate,SR.61349

+1cc to Mr.K.P.Narayanakumar,Advocate,SR.61426

+1cc to M/s.Special Government Pleader,SR.61663

ORDER MADE IN
W.P (MD) No.23908 of 2016
21.06.2017

SMN

KK/SV MMS/SAR1-30.06.2017-3P-8C