



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

W.P(MD)No.24118 of 2016
and
W.M.P(MD)No.17411 of 2016

V.Baluchamy .. Petitioner

Vs.

1.The Commissioner,
Madurai Corporation,
Madurai.

2.The Inspector of Police,
Theppakulam Police Station,
Madurai.

3.Iruthaiya samy

4.Sagayaraj .. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order in Ma.3A2/004400/ 2015 dated 20.10.2015 of the first respondent and to quash the same, consequently, directing the first respondent to take necessary action upon the third and fourth respondents for opening the Government common path to using for transportation to petitioner which situated at Survey No. 66/9 in Iravathanallur, Madurai.

For Petitioner : Mr.S.Moorthy
For Respondent No.1 : Mr.R.Murali
for Mr.G.R.Swaminathan
For Respondent No.2 : Mr.D.Muruganandam,
Additional Government Pleader.

For Respondent No.3 : Mr.R.Manoharan
For Respondent No.4 : (No appearance).

**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 call for records relating to the order dated 20.11.2015 alleged to have been passed by the first respondent and quash the same and also for taking necessary action to remove encroachments alleged to have been made by the third respondent, by way of issuing a writ of certiorarified mandamus.

2.It is averred in the petition that the petitioner is a resident of 7b, Sathiya Nagar, Iravathanallur, Madurai. Further it is averred in the petition that in Survey No.66/9, a width of twenty feet road is situate, wherein the third respondent has made certain encroachments. But the first respondent has passed the impugned order by way of stating that a civil litigation is pending. Under the said circumstances, the present writ petition has been filed for getting the relief sought therein.

3.The learned counsel appearing for the petitioner has advanced his argument on the basis of averments made in the writ petition.

4.The learned counsel appearing for the third respondent has contended that the present petitioner has no *locus standi* to file the present writ petition, since he is residing somewhere else and he is not using the alleged pathway.

5.The learned counsel appearing for the first respondent has contended that the first respondent has passed the impugned order only on the basis of pendency of civil suit.

6.The main contention putforth on the side of the petitioner is that in Survey No.66/9, there is a twenty feet width road and in a portion of the same, the third respondent has made certain encroachments.

7.Considering the contentions putforth on the side of the petitioner and also considering the stand taken on the side of the first respondent, this Court is inclined to pass the following order.

8.In fine, this writ petition is allowed without costs. The impugned order dated 20.10.2015 passed in Ma.3A2/004400/ 2015 by the first respondent is set aside and the first respondent viz., Commissioner, Madurai Corporation is strictly directed to conduct proper survey with regard to existence of road in Survey No.66/9, Iravathanallur, Madurai and if any encroachment is in



existence, directed to remove the same under due process of law within a period of two months. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

smn

To

1.The Commissioner,
Madurai Corporation,
Madurai.

2.The Inspector of Police,
Theppakulam Police Station,
Madurai.

+1CC to Spl.Government Advocate Sr.No.4130
+1CC to Mr.S.Moorthy, Advocate Sr.No.3728
+1CC to Mr.Murali, Advocate Sr.No.4031
+1CC to Mr.R.Manoharan, Advocate Sr.No.4177

GJM/MR/SAR-2-30.01.2017-3p-7C

ORDER MADE IN
W.P(MD)No.24118 of 2016
and
W.M.P(MD)No.17411 of 2016
24.01.2017