

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.02.2018

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE Mr. JUSTICE S.VAIDYANATHAN

W.P.No.18127 of 2017

R.Alagu Saravanan

.. Petitioner

Vs.

1. District Collector,
Office of the Collectorate
Tiruppur District
2. The Tahsildar,
Madathukulam Taluk
Madathukulam, Thiruppur District
3. Executive Officer,
Panchayat Board,
Kaniyur, Madathukulam Taluk,
Thiruppur District
4. Meenatchi

...Respondents

(R2 amended as per Order dated 15/09/2017 in
WMP.24860/2017 in WP.18127/17)

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Mandamus directing the 3rd Respondent to remove the encroachment in the East of Bajanai Koil Street near the Ramalingam Pillai Street and thereby restore the passage leading to the Kadathur Road, Kaniyur, Madathukulam Taluk, Tiruppur District and Sewerage Line for the free flow of the sewerage water.

For Petitioner : Mr.C.Sriranjani

For Respondents : Mr.A.N.Thambidurai for R1 to R3
Special Government Pleader

Mr.C.Prakasam for R4

O R D E R

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

Heard the Learned Counsel for the Petitioner, Learned Special Government Pleader for the Respondents 1 to 3 and the Learned Counsel for the 4th Respondent.

2. According to the Petitioner, he is residing at Ramalingampillai Street, Kaniyur, Madathukulam Taluk, Tiruppur District for the past 25 years and his ancestors were residing in the same place for more than 50 years. There was a passage measuring 66 feet in length and 6 feet in width at the east of Banajai Koil street near Ramalingam Pillai Veedi, which leads to Kadathur Main Road. In fact, this passage was in usage for the public for more than 50 years and by virtue of a Partition Deed dated 04.05.1959 (vide Document No.1045 of 1959), on the file of Sub Registrar, Udumalpet, (the document being effected among Late Kumarasami Pilai, Thangammal and his son Nagappa Pillai) this passage measuring 66 feet length and 6 feet width was made mention of in the deed and it was excluded for the purpose of public usage and in fact, this passage leads to Kadathur Main Road.

3. At this stage, Learned Counsel for the Petitioner brings it to the notice of this Court that the aforestated passage was blocked by the neighbouring house, which belongs to Manikam pillai, obstructing the passage, later, the said Manikam Pillai sold to Meenakshi, being the 4th Respondent herein and in the passage, sewerage water used flow through the ditch canal and drain without any stagnation and after this passage was blocked, the inmates of the houses situated at the Ramalingam Pillai Veedhi were very much affected and underwent hardships.

4. It comes to be known that during rainy season, because of the obstruction in the passage, sewerage water used to stagnate and pave way for mosquito breeding and because of this, infants and senior citizen very often used to fall sick like Malaria, Dengu Fever and Swine Flu. Apart from that, the inmates of Ramalingam Pillai Veedhi had to walk a long distance to reach the Kadathur Main Road, very often, the sick patients, who are in a serious condition needs to be carried out and walk long distance to reach the Kadathur main Road to reach hospital. Thus, the Petitioner is facing hardships due to blockage of the passage.

5. The Learned Counsel for the Petitioner points out that the Petitioner had submitted numerous Petitions to the Respondents to take steps to remove the obstruction in the passage leading to Kadathur Road for usage of the public. As a matter of fact, the Petitioner and even his ancestors have been writing number of Petitions for the relief and on 25.01.1975, Kaniyur Panchayat Board, through its proceedings, i.e., Resolution No.202, took the present issue based on the request of the residents belong to Ward No.9, presently Ward No.13 and passed a resolution to acquire the passage area under the land

acquisition Act and further, it was resolved to request the District Collector to take steps in this regard. Later, on 31.05.1976 by virtue of proceedings of Kaniyur Panchayat Board's Resolution No.41, this issue was taken up and it was resolved in the interest and welfare of the public. A resolution was passed to acquire the passage area forcibly and this regard it is to take permission from the concerned authorities. In spite of the aforesaid resolutions, no action has been taken to restore the passage.

6. The principal contention advanced on behalf of the Petitioner is that sewerage drain was constructed some 18 years ago, but the owner of the neighbouring house, namely, 4th Respondent (who purchased house from Manikam Pillai) with an encroachment did not heed to their request for removing the obstruction and because of this encroachment in the public place, the sewerage water could not flow and used to stagnate in the Ramalingam Pillai Veedhi. In the year 2015, three persons were affected by Dengu, Malariya and a representation dated 18.11.2002 was given by the residents of the 13th Ward (presently Ward No.9) to the Executive officer, Kaniyur Panchayat Board to restore the sewerage line for free flow of sewerage water. However, no action was taken by the 3rd respondent, once again a representation dated 06.03.2015 (by means of a registered post) was sent to the 1st Respondent / District Collector, Thiruppur to take steps to remove the obstruction and restore the passage for public usage and for free flow of sewerage water and later, Petition dated 20.11.2015 was given to the 2nd and 3rd Respondents viz., Tahsildar, Madathukulam Taluk, and Executive Officer, Panchayat Board, Kaniyur Madathukulam Taluk claiming same relief. Also, the present matter was taken up before the Hon'ble Chief Minister, Secretariat, Chennai by means of a Petition dated 25.11.2015 and on 28.11.2015, the Petitioner addressed a communication to the Health Officer stating that due to stagnation of the sewerage water, they have been affected and exposed to the danger of infection of the disease and made a request to Health Officer to take steps to remove the sewerage stagnation.

7. Subsequently, the Petitioner submitted a Petition to the 1st Respondent / District Collector for removing obstruction and to restore the passage, which they are using it for the past 50 years and to restore the line for the free flow of sewerage water. The Petition was forwarded by the 1st Respondent / District Collector, when the Petitioner met the latter in-person and the said Petition was forwarded to the 2nd Respondent / Tahsildar, Madathukulam, Tirupur District with an advice that within 60 days, appropriate action should be taken and result of action must be informed to the Petitioner.

8. Indeed, Tahsildar, Madathukulam Taluk inturn forwarded the petitions to the Executive Officer, Kaniyur Panchayat Board to take action on the petitions. In spite of addressing numerous

petitions by means of a registered post and the said petitions being acknowledged, the respondents have not taken any steps to remove the obstructions in the east of Bajanai Koil Street, Near Ramalingam Pillai Street, which closed the public path leading to East to West to Kadathur Main Road and also the drainage line thereby causing hardships to the public. Hence, left with no other option, but, to file the present Writ Petition seeking for an issuance of Writ of Mandamus by directing the 3rd Respondent / Executive Officer, Panchayat Board, Kaniyur, Madathuykulam Taluk, Tiruppur District to remove the encroachment made by the 4th Respondent and to restore the passage leading to the Kadathur and the Sewerage line for the free flow of the sewerage water.

9. Per contra, it is the submission of Learned Special Government Pleader appearing for the Respondents 1 to 4 that the Petitioner is residing at Ramalingampillai Street, Kaniyur, Madathukulam Taluk, Thiruppur District for the past 25 years and his ancestors have resided in the same area for the past 50 years. Further, there was a passage measuring 66 feet in width at east of Bajanai Koil Street near Ramalingam Pillai Veedhi, which leads to Kadathur Main Road and the said passage was used by the public for the past 50 years. The said passage relates to one Arumugam Pillai and Manickam Pillai. The same was recorded in the Revenue Records such as Natham Chitta and Adangal and the said passage comes under the Natham Survey No.606/42 and 606/43 of Kaniyur Village and the aforesaid passage does not relate to Tmt.Thangammal and her son Nagappa Pillai, as averred in the Writ Petition.

10. The Learned Counsel for the 3rd Respondent brings it to the notice of this Court that the said Manickam Pillai has constructed Bathroom and latrine in his patta land and the same was used by him and later, he sold the house to the 4th Respondent. In this connection, the passage was blocked by the 4th Respondent, separate drainage was constructed by the 3rd Respondent / Executive Officer, Panchayat Board, Kaniyur Madathukullam, Taluk at the cost of Rs.2,00,000/- and the above drainage was constructed for the convenience of the residents of the Ramalingam Pillai Street, Kaniyur. The drainage pipe line were extended to the drainage of kadathur Village. In this connection, Learned Counsel for the 3rd Respondent contends that there is no stagnation of water during the rain period in Ramalingam Pillai Street, Kaniyur and no one has affected in this area on Dengu, Malaria. The public are using the another passage to reach Kadathur Main Road and Hospitals in kaniyur Village. The resident of the Ramalingam Pillai street are using the new passage and they are fully satisfied with the new passage. Besides this, residents of Ramalingam Pillai Street are not facing any hardships due to the blockage of passage in Natham Survey No.606/42 and 606/43, which relates to the 4th Respondent.

11. The pith and substance of the stand of the 3rd Respondent is that the 4th Respondent had not encroached any public place or government poramboke and in fact the 4th Respondent had constructed bathroom and latrine in the patta land in Survey Nos.606/42 and 606/43 etc., To put in precisely, the 3rd Respondent has come out with a categorical plea that the 4th Respondent has not made any encroachment on the Government poramboke land.

12. Further, the Tahsildar, Madathukulam Taluk had inspected the passage in Kaniyur Village and found that the 4th Respondent had not encroached any Government land and that the petitioner was informed that no encroachment was made by the 4th Respondent. Actually, the passage is the own land of the 4th Respondent and separate sewerage water was constructed by the Town Panchayat, Kaniyar to the expenditure of 2 Lakhs.

13. In view of the categorical averments made on behalf of the 3rd Respondent / Executive Officer, Kaniyur Town Panchayat, Kaniyur - 642 203, Thiruppur District and in view of the submissions made on behalf of the Respondents 1 to 3, by the Learned Special Government Pleader, this Court is of the considered view that the passage land is in patta land of the 4th Respondent in Natham Survey Nos.606/42 and 606/43. That apart, this Court at the risk of repetition points out that the drainage line was constructed by the Kaniyur Town Panchayat at the expenses of Rs.2,00,000/- in a different place and separate sewerage line was also constructed for the free flow of the sewerage water for the convenience of Ramalingam Pillai Street, Kaniyur Village, Madathukulam, therefore, this Court is not inclined to grant any relief as sought for by the Petitioner in the main Writ Petition.

14. At this juncture, the Learned Co unsel for the petitioner points out there is stagnation of water in Ramalingam Pillai Street and till date, it remains the same and that the stagnated drainage water has not been removed by the authorities concerned. Taking note of the submission advanced on behalf of the Petitioner in regard to the stagnation of drainage water Ramalingam Pillai Street, this Court deems it fit and proper to direct the 3rd Respondent to take necessary, effective and efficacious, diligent and good speed steps to remove the stagnated drainage water from Ramalingam Pillai Street, within a period of two weeks from the date of receipt of a copy of this order.

15. Before parting with the case, this Court makes it lucidly clear that if the 4th Respondent being the owner of Patta land in Survey Nos.606/42 and 606/43 is not making any endeavour to take necessary steps in removing the drainage /

stagnated water for the free flow of sewerage water and if it is allowed to remain there, as it is, then, it is open to the 3rd Respondent or any other Authority Concerned to take necessary action as per ingredients of the Public Health Act and if situation so warrants to remove the stagnated water from the 4th Respondent land in question.

With the aforesaid observation(s) and direction(s), this Writ Petition is disposed of.

Sd/-

Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

ssd

To

1. District Collector,
Office of the Collectorate
Tiruppur District
2. The Tahsildar,
Madathukulam Taluk
Madathukulam, Thiruppur District
3. Executive Officer,
Panchayat Board,
Kaniyur, Madathukulam Taluk,
Thiruppur District

+1cc to Mr.C.Prakasam, Advocate SR.No.8883
+1cc to Mr.Sri Kanjan, Advocate SR.No.8339
+1cc to Government Pleader SR.No.9372

W.P.No.18127 of 2017

GMI (CO)
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