

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.19709 of 2018
and
W.M.P.No.23136 of 2018

M/s.Kurinji Super Specialities Hospital (P) Ltd.,
(Formerly known as Teejay Associates &
Teejay Institute of Orthopaedics & Traumatology (P) Ltd.,
Rep. by one of its Directors, Dr.J.Manimaran,
Teejay Hospital Road,
Five Roads, Salem 636 016. Petitioner

Vs

1.The District Collector,
Office of the Collectorate,
Salem District,
Salem - 636 001.

2.The District Revenue Officer,
Office of the Collectorate,
Salem District,
Salem - 636 001.

3.The Commissioner,
Salem Corporation,
Salem 636 006.

4.The Tahsildar,
Salem West, Suramangalam,
Salem 636 005.

.... Respondents

PRAYER : Writ petition is filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, forbearing the respondents from demolishing/removing the compound wall situated across 20 feet width Kodivaikkal comprised in S.No.97/1 of Reddiyur Village, Salem Taluk and District abutting the properties of the petitioner hospital comprised in S.Nos.97/4H, 4E2, 4G measuring Hectare 0.95-5 and comprised in S.No.98/8B measuring Hectare 0.8 of Reddiyur Village, Salem Taluk & District except by due process of law.

For Petitioner : Dr.C.Ravichandran

For Respondents: Mr.R.Udhayakumar (for R1, R2 and R4)
Additional Government Pleader

Mrs.K.Bhuvaneshwari (for R3)

O R D E R

(Order of this Court was made by N.Kirubakaran, J.)

The petitioner has come before this Court seeking Writ of Mandamus, forbearing the respondents from removing the compound wall situated across 20 feet width Kodivaikkal comprised in S.No.97/1 of Reddiyur Village, Salem Taluk.

2.Heard, Dr.C.Ravichandran, learned counsel appearing for the petitioner. He would submit that the petitioner has constructed a hospital and in between the hospital building there is an unused water way and therefore, he sought permission to use the water way as a road. A survey has been conducted by the Tahsildar and recommended for permission in the year 2008. However, no decision has been taken. Meanwhile, the petitioner has put up compound wall. Therefore, action has been taken by the respondents to remove the compound wall. Hence, the petitioner has come before this Court.

3.He would submit that the water way is not used and there is no other use of the water way. Moreover, even in the other parts of the water way, encroachments have been made and buildings have been constructed and therefore, no prejudice will be caused to anybody, if the water way is used by the petitioner, by constructing a compound wall.

4.Mr.R.Udhayakumar, learned Additional Government Pleader, who takes notice on behalf of respondents 1, 2 and 4 would submit that it is a water body and nobody could be allowed to encroach upon the water body.

5.Mrs.K.Bhuvaneshwari, learned counsel, who takes notice on behalf of the 3rd respondent would submit that the petitioner already filed a suit in O.S.No.160 of 2006, against the Salem Corporation, before the Civil Court with respect to skim road and the said suit after contest was dismissed on 28.02.2017. Thereafter, Appeal Suit has been preferred by the petitioner in A.S.No.44 of 2017 and the same is pending.

6.Heard the parties and perused the records. Admittedly the compound wall is situated across 20 feet width in Kodivaikkal comprised in S.No.97/1 of Reddiyur Village, Salem. The petitioner is said to have constructed Kurinji Hospital in Survey Nos.97/4E, 97/4F, 97/4G and 97/4H of Reddiyur Village,

Salem Taluk & District. In the middle of the above property only the water way is said to be located. Even according to the petitioner himself, it is a water way. When that is the position, the petitioner cannot make use of the water way for some other purpose by encroaching upon the water way. Merely, because the others have encroached upon and put up construction, that will not give any right to the petitioner as there can be no equality in illegality and Article 14 of Constitution of India cannot be invoked.

7. Further it is seen that compound wall has been constructed encroaching upon the water way and the respondents are trying to demolish it. The respondents are justified in removing the compound wall, which is a kind of encroachment on the water body. Therefore, the prayer sought for by the petitioner cannot be granted.

8. The learned counsel appearing for the petitioner would submit that the water way is in no way in existence as third parties have encroached upon the Kodivaikkal comprised in S.No.97/1. Therefore, the respondents are directed to take a survey and remove the encroachments as per law and restore the water body within a period of three months from the date of receipt of a copy of this order. The petitioner is granted two months time to raise the compound wall within their specified boundaries.

With the above directions, this Writ Petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

1. The District Collector,
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Salem District,
Salem - 636 001.

2. The District Revenue Officer,
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Salem - 636 001.

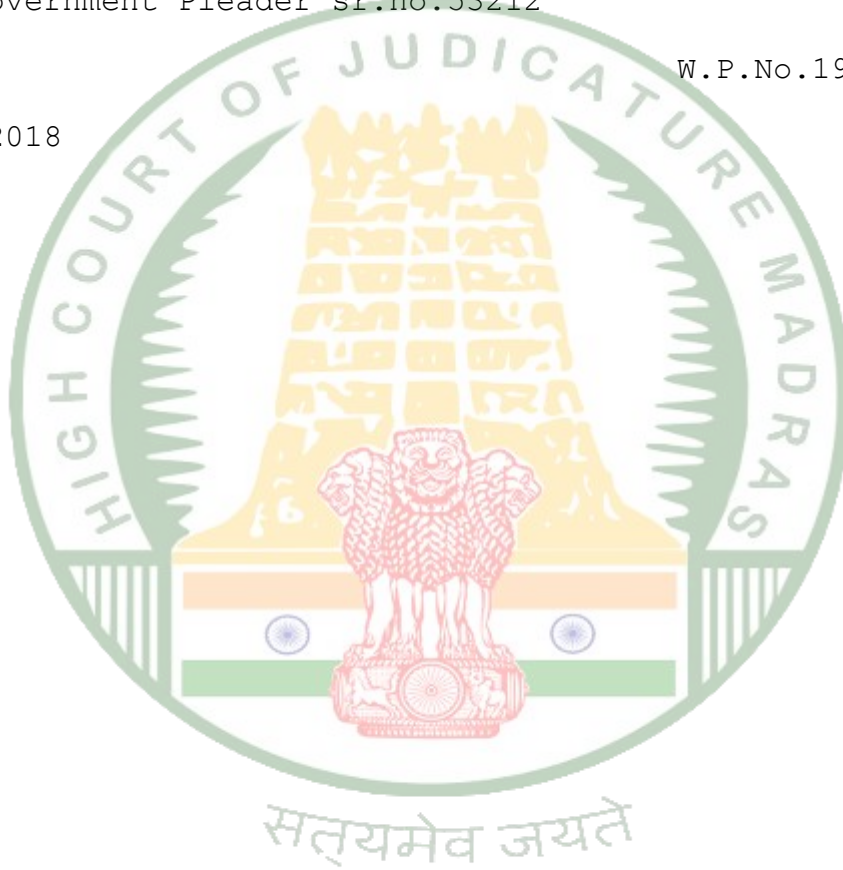
3.The Commissioner,
Salem Corporation,
Salem 636 006.

4.The Tahsildar,
Salem West, Suramangalam,
Salem 636 005.

+1cc to Mrs.K.Bhuvaneshwari, Advocate sr.no.52278
+1cc to Dr.C.Ravichandran, Advocate sr.no.52267
+2cc to Mr.S.D.Venkateswaran, Advocate sr.no.52185
+1cc to Government Pleader sr.no.53212

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nr 27/08/2018



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