



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

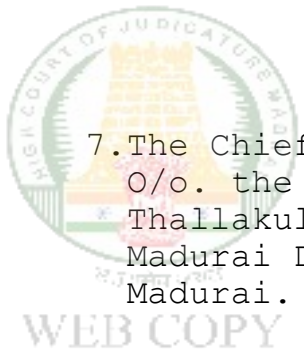
W.P.(MD) No.728 of 2018
and W.M.P.(MD) No.815 of 2018

Arunjunai Nagar Kudirupor Nalasangam,
Rep. by it's President,
S.Shenbagam,
36, Sriram Plastic,
High School Road,
Avaniyapuram,
Madurai - 625 012.

... Petitioner

-vs-

- 1.The State of Tamil Nadu,
Rep. by it's Secretary to Government,
School Education Department,
St. George Fort,
Chennai - 9.
- 2.The Director of School Education,
DPI Campus,
College Road,
Chennai - 600 006.
- 3.The District Collector,
O/o.the District Collector Office,
Madurai District, Madurai.
- 4.The Commissioner,
O/o. the Madurai Corporation Office,
Madurai, Madurai District.
- 5.The District Revenue Officer,
O/o. the District Collector Officer,
Madurai District, Madurai.
- 6.The Revenue Divisional Officer,
O/o. the Revenue Divisional Office,
Melur, at Othakadai,
Madurai District.



7.The Chief Educational Officer,
O/o. the Chief Educational Office,
Thallakulam,
Madurai District,
Madurai.

8.The Executive Engineer,
O/o. the Executive Engineer Office,
Public Works Department,
Thallakulam,
Maduari,
Madurai District.

9.The District Educational Officer,
O/o. the District Educational Office,
Madurai,
Madurai District.

10.The Tahsildar,
South Taluk Office,
Madurai,
Madurai District.

11.The Head Master,
Government High School,
Avanyapuram,
Madurai District.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, forbearing the respondents herein from in any way closing down the public path way situated in Survey No.132/2, Avanyapuram Village, Madurai South Taluk, Madurai South Registration District.

For Petitioner : Mr.M.Ajmalkhan,
Senior Counsel for
M/s.Ajmal Associates

For st Respondents 1 to: Mr.A.K.Baskarapandian
3 and 5 to 11 Special Government Pleader

For 4th Respondent : Mr.R.Murali
Standing Counsel

O R D E R

(Order of the Court was made by M.M.SUNDRESH, J.)

This Writ Petition has been filed seeking to forbear the respondents herein from in any way closing down the public path way situated in Survey No.132/2, Avanyapuram Village, Madurai South Taluk, Madurai South Registration District.



2.It appears that there has been a road in existence for a quite number of years. This road is being used by the general public. 10 years ago this road has been converted into metal road. Then, it comes within the purview of Madurai Corporation. Unfortunately, this road comes within the school. Now, an attempt is being made to put up a compound wall covering the entire property of the school. Under the present circumstances, this writ petition has been filed.

3.The learned Senior Counsel appearing for the petitioner would submit that the road being on the periphery of the school, the same can be left out to be used by the public as being done till now. The road has been used as such for a quite number of years.

4.The learned Special Government Pleader appearing for the respondents 1 to 3 and 5 to 11 would submit that the property having belongs to the Education Department, the prayer sought for cannot be granted.

5.We have seen the sketch produced by the learned Special Government Pleader. The sketch clearly indicates that the existing road forms the boundary of the school. Even the learned Special Government Pleader submits that there is no difficulty in using part of the road, but the remaining part after the curve cannot be allowed to be used.

6.We are of the view that the basic facts are not in dispute and therefore, equitable order requires to be passed. After all, the road is being used by the public. Therefore, we are dealing with one public interest with the other. Of the two, the interest of the public using the road becomes predominant because there is no difficulty in permitting the public to use the road. It is not as if the property of the school gets affected by the using of the road as it is on the periphery of the school. Therefore, it would be appropriate to permit the general public to use the road which is under the control of Corporation of Madurai. Now the road has been converted into a metal road. Right to access is an accrued one especially when the same is used by public. The existence of the road for decades and the development of Tar road into metal one are not in dispute. Putting a compound wall by covering the road would help no one's cause. In that eventuality the road laid already will have to be removed.

7.In such circumstances, we hereby direct the respondents 1 to 3 and 5 to 11 to put the compound wall by excluding the existing road. We also finds the need for the compound wall as there were prior encroachments. Therefore, we directs the respondents 1 to 3 and 5 to 11 to put up the compound wall around the school excluding the existing road within a period of three months from the date of receipt of a copy of this order.



8.This Writ Petition stands disposed of with the above directions. Consequently, connected Miscellaneous Petition stands closed. No costs.

WEB COPY

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar(CS-I)

To

- 1.The Secretary to Government,
School Education Department,
State of Tamil Nadu,
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Chennai - 9.
- 2.The Director of School Education,
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- 3.The District Collector,
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+1 CC To M/s.Ajmal Associates, Advocate SR. NO. 92320
+1 CC To MR.R.Murali, Advocate SR. NO. 91706
+1 CC TO The Special Government Pleader SR.NO. 91782

W.P. (MD) No.728 of 2018
24.10.2018

sj
TR/SKN/SAR-I (22.11.2018) 5P 14C