



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Dated : 27.09.2018

CORAM :

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THE HONOURABLE MR.JUSTICE T.RAJA
And
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P (MD) No.21072 of 2017

Thoothukudi Mavatta
Makkal Narpani Eyakkam,
Rep. by its President
PM.Subbiah

... Petitioner

vs.

1.The District Collector,
Thoothukudi District,
Thoothukudi.

2.The Revenue Divisional Officer,
Kovilpatti Sub Division,
Thoothukudi District.

3.The Tahsildar,
Kayathar Taluk,
Thoothukudi District.

4.Anthonysamy

5.Sakayaraj

... Respondents

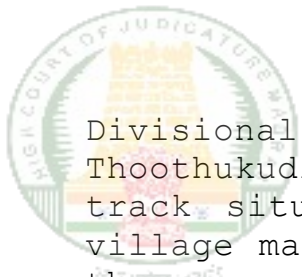
Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Mandamus directing the respondents 1 to 3 to remove the encroachment of the cart track situated in S.No.69/4 and 69/5 in Kamanayakkanpatti Village made by the fourth and fifth respondents and consider the petitioner's representation dated 31.08.2017.

For Petitioner	: Mr.M.Prabu
For R1 to R3	: Mr.V.R.Shanmuganathan Special Government Pleader
For R4 & R5	: Mr.G.Mohankumar

ORDER

(Order of the Court was made by T.RAJA, J.)

Thoothukudi Mavatta Makkal Narpani Eyakkam represented by its President, has filed the present writ petition seeking a writ of Mandamus directing the District Collector, Thoothukudi; Revenue



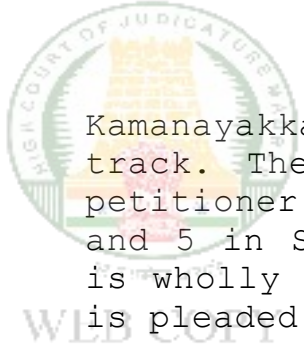
Divisional Officer, Thoothukudi and Tahsildar, Kayathar Taluk, Thoothukudi District, to remove the encroachment made in the cart track situated in Survey Nos.69/4 and 69/5 in Kamanayakanpatti village made by the fourth and fifth respondents, on the basis of the representation, dated 31.08.2017.

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2.The learned counsel appearing for the petitioner submitted that there is a cart track existing in Survey No.66/2A, 66/3B, 69/4 and 69/5 at Kamanayakkanpatti Village, Kayathar Taluk, Thoothukudi. The said cart track is running through Survey Nos.74 and 80 and even after crossing Kovilpatti - Pasuvanthanai road, ultimately leads to Theerthampatti village of Kovilpatti Taluk. Therefore, the people of the village and students are using the said cart track for many years. A 30 feet road also has been formed in the place, where a cart track road has been running in Survey Nos.66/2A and 66/3B. Likewise, a 30 feet road also is laid in Survey Nos.73, 74 and 40, but no such road is laid in Survey Nos.69/4 and 69/5, as the cart track has been unlawfully encroached by the respondents 4 and 5. In this regard a representation was made to the Tahsildar, Kayathar Taluk, Thoothukudi District, to take action. As there was no reply, the petitioner has made an appeal. In the meanwhile, Kayathar Taluk was formed and the Tahsildar of Kayathar Taluk, the third respondent herein, also sent a reply to the petitioner's application under RTI admitting the case of the petitioner that there is a cart track in Survey Nos.69/4 and 69/5 at Kamanayakkanpatti Village, Kayathar Taluk, Thoothukudi.

3.This has been controverted by the contesting respondents saying that the cart track is running only in private land. As the fourth respondent has been unlawfully encroaching the cart track road, i.e. meant for the common public, a direction is issued to the respondents 1 to 3 to remove the cart track situated in Survey Nos.69/4 and 69/5 at Kamanayakkanpatti Village, Kayathar Taluk, Thoothukudi.

4.Fourth respondent has filed a counter affidavit taking a stand that with regard to the same issue, a suit was filed in O.S.No.206 of 1999 on the file of the District Munsif Court, Kovilpatti, against the Government Higher Secondary School, Kamanayakkanpatti, District Collector, Thoothukudi and two other private parties seeking for permanent injunction not to encroach upon and create a pathway in the suit scheduled properties and after contest, the said suit was decreed on 27.11.2000. As against the said Judgement and decree passed by the trial Court, A.S.No.8 of 2001 was filed before the Sub Court, Kovilpatti, which was dismissed by the lower appellate court. As against that S.A.No.1452 of 2003 was also filed before this Court, which was dismissed by the Court. In the said Judgment, it was made clear that Survey Nos.69/4 and 69/5 in



Kamanayakkanpatti, is not a part of public road or public cart track. Therefore, the prayer in the writ petition made by the petitioner to remove the encroachment made by the respondents 4 and 5 in Survey Nos.69/4 and 69/5, which are in the private land is wholly untenable. Therefore, the prayer has to be rejected, it is pleaded.

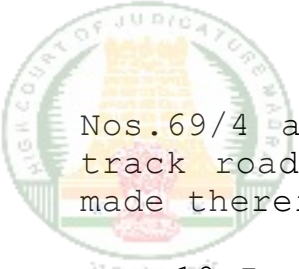
5.Mr.V.R.Shanmuganathan, learned Special Government Pleader placing on record the typed set of papers enclosing 'A' Register, FMB Sketch of Kuruvinatham village explained to us that the Survey Nos.69/4 and 69/5 are riot punjai and Survey No.69/5 also enam punjai. But however, this has been given as a surplus enam. Again explaining on the FMB sketch, he has submitted that as contended by the learned counsel for the fourth respondent, that the cart track running in Survey Nos.69/4-5 is only in the private land, there is no evidence thereon, hence the same is wholly unsustainable, since the trial Court in its Judgement, dated 27.11.2000, after appreciating the evidence on record, came to the conclusion that if the Revenue Department is fully satisfied, on the basis of any revenue records that there is a cart track, which is being used by the common public in Survey No.69/4-5, it is for the Revenue Department to take appropriate action for removal of encroachment. This has been confirmed by the appellate Court in A.S.No.8 of 2001 and successfully by this Court also in S.A.No.1452 of 2003.

6.Therefore, as per the Revenue records and the FMB sketch of Kuruvinatham village, there is a cart track running in Survey Nos.69/4-5. Therefore, when the Judgement passed by the lower Court in O.S.No.206 of 1999 has been accepted by the fourth respondent, which has been confirmed repeatedly by both the appellate Courts, the fourth respondent again misunderstood the observations giving liberty to the Revenue Department for removal of encroachment, if the revenue department satisfied that there is a common cart track.

7.We are also able to fully agree with the learned Special Government Pleader, the reason being both the 'A' Register and the FMB Sketch showing the Survey Nos.69/4-5 are clearly indicating beyond any doubt that there is a cart track running in Survey Nos.69/4-5.

8.The learned counsel for the fourth respondent has submitted that the fourth respondent has put up a residential house, but this has been disputed by the learned counsel for the petitioner stating that it is not a residential house, but it is a commercial building.

<https://hcservices.courts.gov.in/hcservices/> 9. Be it as it may, when it has been found that there has been encroachment made by the respondents 4 and 5 in Survey



Nos.69/4 and 69/5 in Kamanayakkanpatti Village, which is a cart track road made for the common public, whatever the encroachment made therein are liable to be removed.

10. In view of the above reasons, repelling the contentions made by the fourth and fifth respondents, accepting the prayer made by the petitioner, the writ petition stands allowed. The respondents 1 and 2 are directed to remove the encroachment made by the respondents 4 and 5 in Survey Nos.69/4 and 69/5 in Kamanayakkanpatti Village, within a period of two weeks from the date of receipt of a copy of this order. The fourth and fifth respondents are also directed to co-operate with the removal of encroachment. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS-II)

To

1. The District Collector, Thoothukudi District,
Thoothukudi.

2. The Revenue Divisional Officer, Kovilpatti Sub Division,
Thoothukudi District.

3. The Tahsildar, Kayathar Taluk,
Thoothukudi District.

+ 1 CC TO MR.M.PRABU, ADVOCATE IN SR NO.87365
+ 1 CC TO SPECIAL GOVERNMENT PLEADER, IN SR NO.87575
+ 1 CC TO MR.R.VIJAYAKUMA, ADVOCATE IN SR NO.87647

RJ2

BU/SV/SAR-2 : 24.10.2018 : 4P/7C

Order made in
W.P (MD) No.21072 of 2017
27.09.2018