



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 28.09.2018

CORAM :

**THE HONOURABLE MR.JUSTICE T.RAJA
AND**

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THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P (MD) No.23042 of 2017

Kaliappan

... Petitioner

vs.

1. The District Collector,
Madurai District,
Madurai.
2. The Assistant Director of Town Panchayat,
Madurai Division,
Madurai.
3. The Revenue Divisional Officer,
Madurai.
4. The Tahsildar,
Vadipatti Taluk
Madurai District.
5. The Executive Officer,
Alanganallur Selection Grade Town Panchayat,
Alanganallur,
Vadipatti Taluk
Madurai District.
6. P.Subramani
7. Agathiyan @ M.Manoj
8. S.Ravikumar
9. Udayakumar

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus to direct the respondents 1 to 5 to remove the encroachment made by the respondents 6 to 9 in front of the petitioner's house on the southern side situated in Survey No.48/4A1 and remove the fencing illegally put up by the respondents 6 to 9 within the time stipulated by this Court.

For Petitioner
For Respondents

: Mr.M.Kannan
: Mr.V.R.Shanmuganathan
Special Government Pleader
for R1 to R4
Mr.K.K.Kannan for R6 to R9

**O R D E R****(Order of the Court was made by T.RAJA, J.)**

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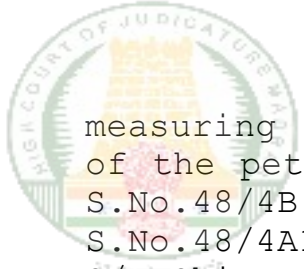
This Writ Petition has been filed seeking a writ of Mandamus to direct the respondents 1 to 5 to remove the encroachment made by the respondents 6 to 9 in front of the petitioner's house on the southern side situated in Survey No.48/4A1 and remove the fencing illegally put up by the respondents 6 to 9.

2. Learned counsel for the petitioner would submit that after purchasing the property in S.No.48/4A1 measuring 12 cents at Alanganallur Village, Vadipatti Taluk, through registered sale deed dated 06.09.1999 bearing document No.1829/1999, for which, patta has also been issued in Patta No.1921, the petitioner has been in peaceful and exclusive possession of the said property. Thereafter, electricity service connection has been obtained in the name of the petitioner in respect of the said land. The house is also facing southern direction and in front of his house, there is a east-west public street, which is running in front of his house and on the side of the street, Ceylon colony is situate and the petitioner also has got a right to access towards the east-west public street.

3. It is also stated that the east west public street also joins Madurai to Palamedu Road. While so, the respondents 6 to 9 with the support of the Panchayat President, in the year 2002, tried to create obstruction to the public street by encroaching the same. When a complaint was preferred to the respondents 1 to 5 in the year 2002, the District Collector intervened and directed the fifth respondent to take immediate steps for removal of encroachment in the street and also the petitioner's right to access the public street is not affected. After some time, the Assistant Director of Town Panchayats, Madurai also by communication dated 22.11.2002 informed the District Collector that they have removed the encroachment and obstruction in the public street found in front of the petitioner's house. But all of a sudden, on 24.10.2017, the respondents 6 to 9 had encroached upon the public street and erected a wire fencing thereby completely obstructed the petitioner's access to east-west public street. Therefore, a representation was given on 30.10.2017. After giving the said representation during the public grievance day, finding no response, the petitioner is before this Court with the aforesaid prayer.

4. Counter affidavit has been filed by all the parties.

5. The Insildar, fourth respondent herein Vadipatti Taluk in his counter affidavit stated that the land in S.No.48/4A1



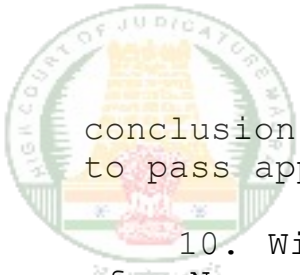
measuring 0.05.0 Ares in Alanganallur Village stands in the name of the petitioner as per the patta bearing No.1921. The lands in S.No.48/4B situated on the southern side of the lands in S.No.48/4A1 is also registered in the name of Karuthagangai, S/o.Chinnagangai and 21 others. These group of persons have purchased various extent of lands and formed one colony known as Ceylon colony and they have been issued with patta for their individual lands and the lands in S.No.48/4B serves as a pathway. Although the settlement records and the village map do not reflect any such Nilaviyal Pathai, the revenue records, namely, 'A' Register prepared during UDR reflects that there is a Nilaviyal Pathai in S.No.48/4B, which has been earmarked for the usage of the pattadars. The respondents 6 to 9, who are claiming to be the pattadars of the said land, till date, have not taken any steps whatsoever to remove the fencing and no such application from anyone has been filed before the District Revenue Officer, Madurai. Therefore, it is not open to the respondents 6 to 9 to contend that the prayer in the writ petition is not tenable.

6. Learned Special Government Pleader submitted that if the respondents 6 to 9 approach the revenue authorities, they will look into the revenue records and answer them properly.

7. A common counter affidavit has been filed by the respondents 6 to 9, which also shows that they have put up the wire fencing only in the land covered in S.No.48/4B, as it belongs to them privately and patta also has been issued to all 23 persons. Therefore, on this basis, it is contended that the writ petition is not maintainable.

8. However, the counter affidavit filed by the respondents 6 to 9, which is filed without support of any documents or any revenue records, showing that the land covered in S.No.48/4B is a patta land. We are not able to find any justification on the part of the respondents 6 to 9. The reason being that the counter affidavit filed by the Tahsildar, Vadipatti has not even been refuted by the respondents 6 to 9 by filing a rejoinder. It is not in dispute that joint patta has been issued to all the 23 persons with patta No.1572 in S.No.48/4B.

9. Having seen the counter affidavit and the stand taken by the respondents in the counter affidavit that there has been a Nilaviyal Pathai, in which, there has been encroachment by putting up a barbed wire fencing by the respondents 6 to 9, the same is liable to be removed. Liberty is given to the respondents 6 to 9 to approach the District Revenue Officer, who also after considering the revenue records and other documents, if any available, can consider the request of the respondents 6 to 9. It is also open to the respondents to mention that if the District Revenue Officer, after holding the enquiry of all the parties, comes to the



conclusion that there is no such Nilaviyal Pathai, it is for him to pass appropriate orders.

10. With the above direction, this Writ Petition is disposed of. No costs.

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Sd/-

Assistant Registrar(crl side)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

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Alanganallur Selection Grade Town Panchayat,
Alanganallur,
Vadipatti Taluk
Madurai District.

+1cc to Mr.M.Kannan, Advocate Sr.No.88035
+1cc to Mr.K.K.Kannan, Advocate Sr.No.87738
+1cc to Spl.Government Pleader Sr.No.87932

VB/SKN/SAR4/01.11.2018/4P/9C

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