

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.No.29233 of 2012
and
M.P.No.1 of 2012

K.A.Venkatesan ... Petitioner

Vs.

1.The State represented by
The District Collector,
Salem District, Salem.

[deleted 1st respondent as per
the order of this court dated
22.11.2012 made in M.P.No.1 of
2012 in Crl.O.P.Sr.No.39017 of
2012.]

2.The Thasildar,
Salem, Salem District.

3.The District Superintend of Police,
Salem District, Salem.

4.The Inspector of Police,
Kandalampatty Police Station,
Salem District.

सत्यमेव जयते ... Respondents

PRAYER: Petition filed under Section 482 of Cr.P.C., for directing the 1st respondent to hold enquiry under Section 133 Cr.P.C. and remove the objection to pathway from Kakkapalayam Main Road to Perumal Koil Street Road in Survey Numbers 17/4B, 17/5C and 17/6B measuring an extent of 1000' x 25' of the Village Vembadithalam, Salem District to secure the ends of justice.

For Petitioner : Mr.R.Sankarasubbu

For Respondents : Mrs.Saradha Devi.V,
Government Advocate (Crl. side)

O R D E R

This Criminal Original Petition has been filed by the petitioner under Section 482 of Criminal Procedure Code to direct the Tahsildar, Salem South, to conduct an enquiry under Section 133 Cr.P.C and remove the encroachment made by Nagarajan, Seetharam, Chenna Krishnan and Suseela in the common pathway from Kakkapalayam Main Road to Perumal Koil Street Road in Survey Nos.17/4B, 17/5C and 17/6B measuring an extent of 1000' x 25' at Vembadithalam Village, Salem South Taluk. As against the inaction of the Executive Magistrate, the present petition has been filed.

2. The learned counsel for the petitioner would submit that in the earlier occasion, this court had directed the Executive Magistrate to conduct an enquiry under Section 133 Cr.P.C and remove the encroachment if any in the public pathway. In spite of the said direction, the encroachment was not removed. Hence, he prays for removal of the said encroachment.

3. The learned Government Advocate (Crl. Side) filed a counter and contended that the Executive Magistrate had taken effective steps to remove the encroachment. It was further contended that the II Additional Subordinate Judge, Salem in the judgment dated 30.05.2011 in O.S.No.44 of 2007 has declared one S.Manoharan as the absolute owner of the suit properties in the said suit and the suit properties common public road is in actual possession and enjoyment of the said S.Manoharan. She would further submit that a perusal of the village accounts of Vembadithalam Village of Salem South Taluk reveals that the suit properties covered in S.Nos.17/4B, 17/5C and 17/6B are classified as 'Boosthithi Pathai' which are required for the use of public and communal purposes. At present the suit properties common public road belongs to S.Manoharan. The said road could be used for public and communal purpose if the said S.Manoharan handover the 25 feet common public road to the President, Vembadithalam Panchayat of Salem South Taluk and appropriate action to this effect is also taken at the level of Panchayat Board, Vembadithalam Village, Salem South Taluk.

4. Heard the counsels on both sides. On a perusal of the counter affidavit filed by the respondent would reveal that the Executive Magistrate had as per the direction of this court taken effective steps to remove the encroachment. The counter affidavit filed would further reveal that the II Additional Subordinate Judge, Salem in the judgment dated 30.05.2011 in O.S.No.44 of 2007 has declared one S.Manoharan as the absolute owner of the suit properties and the common public road is in actual possession and enjoyment of the said S.Manoharan. As per

the village accounts of Vembadithalam Village of Salem South Taluk covered in S.Nos.17/4B, 17/5C and 17/6B are classified as 'Boosthithi Pathai' which are required for the use of public and communal purposes such as provision of concrete Salai and drainage facilities and at present the common public road belongs to S.Manoharan of Vembadithalam Village of Salem South Taluk. The counter affidavit would further reveal that the said road could be used for public and communal purpose if the said S.Manoharan handover the 25 feet common public road to the President, Vembadithalam Panchayat of Salem South Taluk and appropriate action to this effect is also taken at the level of Panchayat Board, Vembadithalam Village, Salem South Taluk.

5. Thus, it could be seen that effective steps are being taken for the removal of encroachment. However, the grievance of the petitioner is that the official respondents did not conduct enquiry as per Section 133 of Cr.P.C and remove the obstructions in the public road. In view of the same, I am inclined to direct the respondents to conduct enquiry as per Section 133 of Cr.P.C and if there is any obstruction in the public road that may be removed forthwith.

6. With the above observations, this Criminal Original Petition is disposed of. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

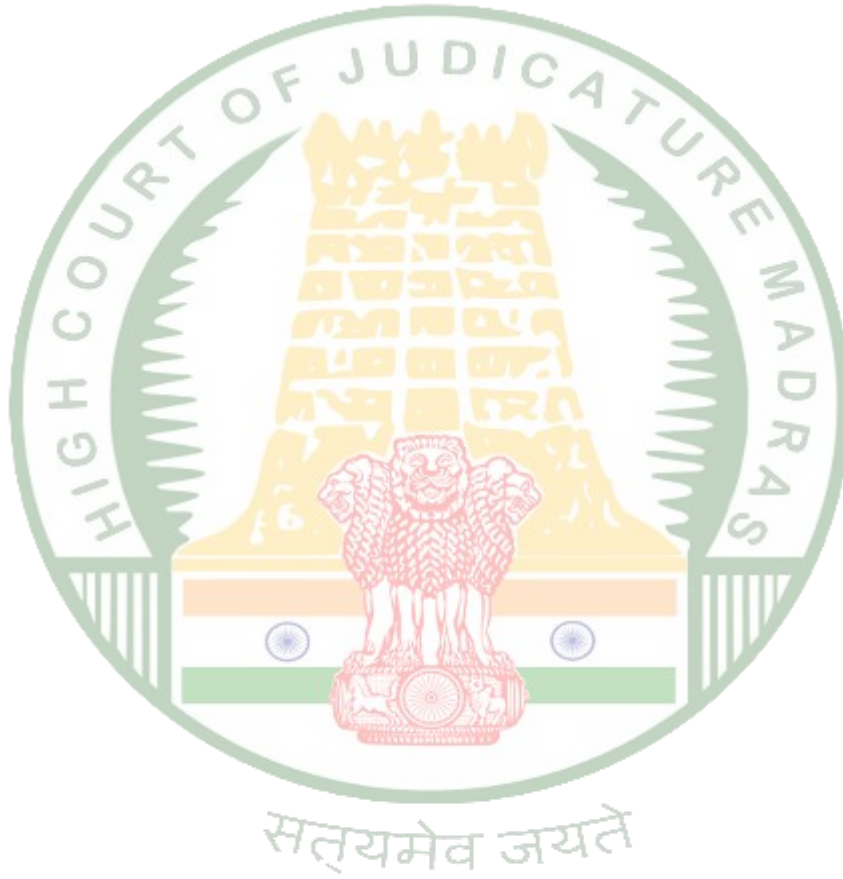
To

- 1.The Thasildar, Salem,
Salem District.
- 2.The District Superintendent of Police,
Salem District, Salem.
- 3.The Inspector of Police,
Kandalampatty Police Station,
Salem District.

4. The Public Prosecutor,
High Court of Madras,
Chennai 600 104.

Crl.O.P.No.29233 of 2012

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