

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2019

CORAM :

THE HON'BLE MRS.VIJAYA K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P.No.22064 of 2018

R.Jagatheeswaran

.. Petitioner

Vs.

1.The District Collector,  
Erode District, Erode - 638 011.

2.The Tahsildar,  
Erode Taluk, Pannerselvam Park,  
Erode Town.

3.The Assistant Commissioner,  
Erode Corporation Division-III,  
Surampatti Village, Teachers' Colony,  
Erode - 11.

4.Thangamuthu

5.Rukkumani

6.Thenmozhi

7.Saraswathi

8.M.Ranjitham

9.R.Parvathi

10.Logambal

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of mandamus directing the respondents 1 to 3 to consider the representation dated 17.07.2018 and to initiate action to remove the unauthorized construction put up by the respondents 4 to 10 in public pathway

which has been classified as Re-survey No.169/3 of Surampatti Village, Erode Taluk within a stipulated time.

For Petitioner : Mr.S.Kaithamalai Kumaran

For Respondents: Mr.S.Kamalesh Kannan,  
Government Advocate (R1 & R2)

Mrs.Poornima  
for Mr.Rajamathivanan (R3)

Mr.G.Pavendhan (R4, R5 & R7)

R6 - no appearance

Mr.P.Valliappan (R8 to R10)

O R D E R

(ORDER OF THE COURT WAS MADE BY M.DURAI SWAMY, J.)

The petitioner has filed the above Writ Petition to issue a Writ of mandamus directing the respondents 1 to 3 to consider the representation dated 17.07.2018 and to initiate action to remove the unauthorized construction put up by the respondents 4 to 10 in public pathway which had been classified as Re-survey No.169/3 of Surampatti Village, Erode Taluk within a time frame.

2.It is the case of the petitioner that the respondents 4 to 10 have put up unauthorized construction in the public pathway and therefore, the authorities should take action to remove the said construction.

3.It is brought to the notice of this Court that the petitioner filed a Civil Suit in O.S.No.107 of 2011 on the file of the II Additional District Munsif Court, Erode for permanent injunction and mandatory injunction. After contest, the Trial Court dismissed the suit, finding that the relief of mandatory injunction is barred by limitation and with regard to the relief of permanent injunction, the Trial Court rejected the same finding that the petitioner has not established his lawful possession over the suit property.

4.Admittedly, the petitioner has not preferred any appeal as against the dismissal of the suit in O.S.No.107 of 2011. Therefore, the findings of the Trial Court has become final. When the petitioner has invited adverse findings before the Trial Court, he has filed the present Writ Petition to direct the official respondents to remove the encroachments made by the private respondents 4 to 10 in the public pathway.

4. When the petitioner himself submitted that the public pathway belongs to the official respondents, it is needless to say that the official respondents shall take necessary steps to protect their properties. However, in the case of the petitioner, since he has failed to establish his case before the Trial Court, the suit was dismissed. When the Trial Court refused to accept the case of the petitioner after trial, we are not inclined to grant the relief in this Writ Petition. In such view of the matter, the Writ Petition is dismissed. No costs.

-s/d-

Assistant Registrar (CCC)

True Copy

Sub-Assistant Registrar

va

To

1. The District Collector,  
Erode District, Erode - 638 011.
  2. The Tahsildar,  
Erode Taluk, Pannerselvam Park,  
Erode Town.
  3. The Assistant Commissioner,  
Erode Corporation Division-III,  
Surampatti Village, Teachers' Colony,  
Erode - 11.
- +1 CC to Mr.S.Kaithamalai Kumaran, Advocate sr 66937.  
+1 CC to Govt. Pleader sr 68053.  
+1 CC to Mr.M. Rajamathivanan, Advocate sr 67700.  
+1 CC to Mr.G.Pavendhan, Advocate sr 67056.  
+1 CC to Mr.P.Valliappan, Advocate sr 67384.

W.P.No.22064 of 2018

RV(CO)  
SP(13/09/2019)

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