



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.04.2019

CORAM:

WEB COPY

**THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
AND
THE HONOURABLE MRS. JUSTICE R.THARANI**

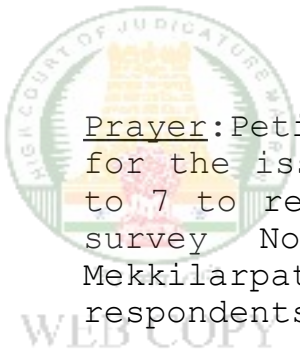
Writ Petition(MD)No.4745 of 2019

Dr.K.Eswaran

.. Petitioner

Vs.

- 1.The District Collector,
Madurai District,
Madurai.
- 2.The Revenue Divisional Officer,
Usilampatti,
Madurai District.
- 3.The Tahsildar,
Usilampatti Taluk,
Usilampatti
Madurai District.
- 4.The Block Development Officer,
Usilampatti, Madurai District.
- 5.The Revenue Inspector,
Uthappa Nayakkanur,
Usilampatti Taluk,
Madurai District.
- 6.The Deputy Tahsildar,
Usilampatti Taluk, Usilampatti
Madurai District.
- 7.The Village Administrative Officer,
Keeripatti Village,
Usilampatti Taluk,
Madurai District.
- 8.K.Mokkapillai



Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of mandamus directing the respondents 1 to 7 to remove the encroachment made in public pathway situated in survey No.85/1 (old survey No.67/1) in Keeripatti Village, Mekkilarpatti post, Usilampatti Taluk, Madurai District by the respondents 8 and 9.

For Petitioner : Mr.S.Sarvaganprabhu
 For Respondents : Mr.Ayiram K.Selvakumar
 Addl. Govt. Pleader for R-1 to R-7
 Mr.D.Sadiq Raja for RR-8 & 9

ORDER

[Order of the Court was made by **K.KALYANASUNDARAM, J**]

This writ petition has been filed for issuance of writ of mandamus directing the respondents 1 to 7 to remove the encroachment made in public pathway situated in survey No.85/1 (old survey No.67/1) in Keeripatti Village, Mekkilarpatti post, Usilampatti Taluk, Madurai District, by the respondents 8 and 9.

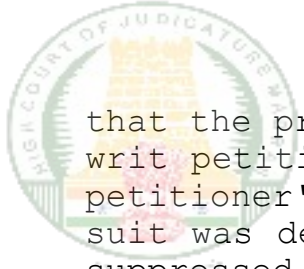
2.Heard Mr.S.Sarvaganprabhu, learned counsel for the petitioner. Mr.Ayiram K.Selvakumar, learned Additional Government Pleader for the respondents 1 to 7 and Mr.D.Sadiq Raja, learned counsel for the respondents 8 and 9 and perused the available materials.

3.The grievance of the petitioner is that the private respondents have encroached in Sy.No.85/1, which is classified as public pathway in the revenue records.

4.The learned counsel for the petitioner would state that pursuant to the order passed in a writ petition in W.P.(MD).No.4655 of 2015 dated 25.09.2015, proceedings were initiated to remove the encroachment. However, due to the pendency of the writ petition in W.P.(MD).No.14454 of 2013 filed by the 8th respondent, no further proceedings were taken up and the writ petition was dismissed as withdrawn. Hence, the present writ petition.

5.Learned Additional Government Pleader on instructions would state that based on the representation of the petitioner and other public, the third respondent had already conducted a survey and found encroachment in S.F.No.85/1 and proceedings will be initiated to remove the encroachment.

6.The learned counsel for the respondents 8 and 9 would state that this writ petition is liable to be dismissed on three grounds. Firstly, no records have been produced by the petitioner to show



that the property in S.F.No.85/1 is a public pathway. Secondly, the writ petitioner was the first defendant in the suit filed by the 8th petitioner's daughter namely Petchiammal in O.S.No.107/2016 and the suit was decreed exparte on 06.06.2017. But the said fact has been suppressed by the petitioner. Thirdly, the 8th respondent has no interest in the property in dispute, since the 8th respondent has already settled the property in favour of his daughter Petchiammal.

7.A perusal of the typed set filed by the 8th respondent would reveal that the second respondent had already issued a notice to the petitioner and respondents 8 and 9 for their appearance on 07.02.2019. It is now stated that the enquiry stands posted on 04.06.2019. Since the second respondent has already issued a notice to the parties for their appearance on 07.02.2019, the respondents 1 to 3 have an obligation to take further action in accordance with law, to see that the proceeding comes to a logical conclusion.

8.Taking note of the facts of the case, the third respondent is directed to conduct a survey in the presence of the petitioner and all other necessary parties and after affording them an opportunity of being heard, they shall pass final orders on merits and in accordance with law. The entire exercise shall be completed within a period of 4 months from the date of receipt of a copy of this order.

9.Accordingly, the writ petition is disposed of. No costs.

Sd/-

Assistant Registrar (AD-I)

/ True Copy /

Sub Assistant Registrar(CS)

To

- 1.The District Collector,
Madurai District,
Madurai.
- 2.The Revenue Divisional Officer,
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- 3.The Tahsildar,
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- 4.The Block Development Officer,
Usilampatti, Madurai District.



5.The Revenue Inspector,
Uthappa Nayakkanur,
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6.The Deputy Tahsildar,
Usilampatti Taluk, Usilampatti
Madurai District.

7.The Village Administrative Officer,
Keeripatti Village,
Usilampatti Taluk,
Madurai District.

+1 CC to M/s.SPL GP (SR-61618[F] dated 22/04/2019)

+1 CC to M/s.D.SADIQ RAJA, Advocate (SR-61867[F] dated 23/04/2019)

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ES/09.05.2019/4P/10C