



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.03.2019

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

W.P. (MD) .No.6098 of 2019
and
W.M.P. (MD) .No.4861 of 2019

Rev.Dr.Msgr.Vincent K.Peter,
The Secretary,
Thekkam Kurusumalai,
Religious and Charitable Trust,
Pathukani,
Kanyakumari District - 629 101.

.. Petitioner

/Vs./

- 1.The District Collector,
Nagercoil, Kanyakumari District.
- 2.The Superintendent of Police,
Kanyakumari District, Nagercoil.
- 3.The Tahsildar,
Vilavancode Taluk,
Kanyakumari District.
- 4.The Inspector of Police,
Arukani Police Station,
Kanyakumari District.
- 5.Kalimalai Amman Kovil Trust,
Rep. by its Secretary,
Pathukani, Kaliyal,
Kanyakumari District.

.. Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India for issuance of writ of mandamus directing the respondents
No.1 to 4 to remove the encroachment put up by the 5th respondent in common pathway towards Kurusumalai Church, Kurusumalai, Vilavancode



Taluk, Kanyakumari District, by considering the petitioner's representation, dated 27.08.2018.

For Petitioner : Mr.G.Ramanathan
For Respondents : Mr.Aayiram K.Selvakumar
Additional Government Pleader
for R1 to R4
Mr.B.Rajesh Saravanan for R5

O R D E R

(Order of this court was made by **K.KALYANASUNDARAM, J.**)

This writ petition has been filed for issuance of writ of mandamus directing the respondents 1 to 4 to remove the encroachment put up by the 5th respondent in common pathway which leads to Kurusumalai church in Vilavancode Taluk, Kanyakumari District, by considering the representation by the petitioner, dated 27.08.2018.

2.Mr.G.Ramanathan, learned counsel for the petitioner would submit that the petitioner is in possession of 6 ½ acres of land in Old survey No.3023 (Resurvey No.1509/3) of Kaliyal Village, Vilavancode Taluk, Kanyakumari District since 1979 and they have constructed concrete cross and an adoration chapel residing and resting places in the Kurusumalai and conducting worship regularly. While so, the 5th respondent had obstructed the common pathway which leads to the Kurusumalai church.

3.Mr.Rajesh Saravanan, learned counsel for the 5th respondent would submit that the petitioner has not established any *prima facie* case to issue direction. It is the contention of the learned counsel that no proper description of property and not even the survey number is mentioned in the prayer. It is stated that this property belongs to one Seva Sangam and they have put up a barricade to protect their property. It is further stated that the writ petitioner is having alternate way to reach the property and the Seva Sangam is not added as respondent in this writ petition.

4.Mr.Aayiram K.Selvakumar, learned Additional Government Pleader would submit that the property in dispute is patta land and the petitioner has to establish their right before the competent Civil Court.

5.Considering the facts and circumstances, we are of the opinion that the disputed question of fact cannot be decided in this writ petition. Hence, the petitioner is directed to approach the competent civil Court to establish his right, if he is so advised.



6. With the above observations, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (Crl. Side)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The District Collector, Nagercoil,
Kanyakumari District.
2. The Superintendent of Police,
Kanyakumari District, Nagercoil.
3. The Tahsildar, Vilavancode Taluk,
Kanyakumari District.
4. The Inspector of Police,
Arukani Police Station,
Kanyakumari District.

+1 CC to M/s. B. RAJESH SARAVANAN, Advocate in SR-57627
+1 CC to M/s. G. RAMANATHAN, Advocate in SR-57674
+1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 57956

W.P. (MD) .No. 6098 of 2019

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PK/23.04.2019 : 3P/8C