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Writ Petition (MD).No.11565 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.09.2019

CORAM:

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE Mrs. JUSTICE R.THARANI

Writ Petition (MD).No.11565 of 2018

P.Jasbin Beno

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. By the District Collector,
Kanyakumari District at Nagercoil.

2.The Revenue Divisional Officer,
Padmanabhapuram,
Thuckalay Post,
Kanyakumari District.

3.The Tahsildar,
Vilavancode Taluk,
Kuzhithurai Post,
Kanyakumari District.

4.The Commissioner,
Kuzhithurai Municipal Corporation,
Vetumani Junction,
Marthandam, Kanyakumari District.

5.Vijukumar

6.Suresh

7.Rajkumar

8.Church of South India, Kanyakumari Diocese
Rep. By its Bishop, ... Respondents
(8th respondent impleaded vide order dated 08.09.2019
made in W.M.P.(MD)NO.13636 of 2019 in
W.P.(MD)No.11565 of 2018 by KRCBJ and SKRJ)

Prayer: Writ Petition is filed under Article 226 of Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondents to remove the obstructions made in the Municipal road within a time frame and thereby facilitating free access on the municipal road to approach to the petitioner's property and for the usage of the general public.



For Petitioner	: Mr.S.Titus
For Respondents 1 to 3	: Mr.M.Murugan, GA
For 4 th Respondent	: Mr.P.Athimoola Pandiyan
For Respondents 5 and 6	: Mr.L.Shaji Chellan
For 7 th Respondent	: Mr.S.C.Herold Singh
For 8 th Respondent	: Mr.M.P.Senthil
	For Mr.R.Deepak

ORDER

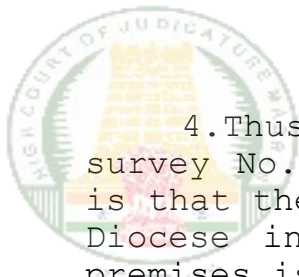
(Order of the Court was made by **T.S.SIVAGNANAM, J**)

Heard Mr.S.Titus, learned counsel appearing for the petitioner, Mr.M.Murugan, learned Government Advocate appearing for the respondents 1 to 3, Mr.P.Athimoola Pandiyan, learned counsel appearing for the fourth respondent, Mr.L.Shaji Chellan, learned counsel appearing for the respondents 5 and 6, Mr.S.C.Herold Singh, learned counsel appearing for the 7th respondent and Mr.M.P.Senthil, learned counsel appearing for the eighth respondent.

2.The petitioner filed by way of writ petition seeks for a direction upon the official respondents to restore a municipal road to enable the petitioner and general public to approach their respective property. The fourth respondent namely, the Commissioner, Kuzhithurai Municipal Corporation, Kanyakumari District has taken a stand that the land comprised in survey No.D3/47 has been classified in A register as "cart track" (epytpay; ghij). If the said survey is a Nilaviyal Pathai, obviously no private parties can be used it. The allegation is that the eighth respondent, Church of South India, Kanyakumari Diocese has encroached into Nilaviyal Pathai apart from private respondents 5 to 7. However we cannot fact finding exercise at this junction unless Revenue Authorities take a clear stand by visiting the property, the issue cannot be redressed.

3.The eighth respondent has filed counter affidavit sworn to by its Bishop. In paragraph no.9 of the counter affidavit, the following has been stated:

"9.It is further stated that "Nilaviyal Pathai" in D3/47 exist as per the counter filed by the 5th respondent whereas the "Nilaviyal Pathai" in D3/47 does not extend in the property of the Diocese in Survey No.D3/4, 5, 6, 7, 30, 39, 40, 66, 67, 68 the entire campus is surrounded by compound wall. It is also evident from the map prepared by Town sub Inspector of survey in Kuzhithurai Municipality. The private pathway in the Diocese property is serving the Diocese Institutions and are maintained only by the respective institutions. Kuzhithurai Municipality has not laid tar or any works done in these pathways within the Diocese property."



4.Thus the eighth respondent does not dispute the fact that survey No.D3/47 is classified as Nilaviyal Pathai. But their stand is that the Nilaviyal Pathai does not extent to the property of the Diocese in D3/4, 5, 6, 7, 30, 39, 40, 66, 67 and 68 and other premises is surrounded by common wall.

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5.In the light of the stand taken by the eighth respondent and also the allegation made by the petitioner and noting the fact that their existence in the Nilaviyal Pathai, the Revenue Officials has to examine as to whether there is any encroachment or obstruction to Nilaviyal Pathai which is a public pathway. Therefore, we direct the fourth respondent, the Commissioner, Kuzhithurai Municipal Corporation, Kanyakumari District, to conduct an inspection in the area, after issuing notice to the petitioner, respondents 5 to 8. Based on the inspection, an order shall be passed by the Tahsildar, Vilavancode Taluk, Kanyakumari District. The above direction shall be complied with within a period of eight weeks from the date of receipt of copy of this order.

6.With the above direction, this writ petition is disposed of. No Costs.

Sd/-

Assistant Registrar (C.O)

// True Copy //

Sub Assistant Registrar(CS)

To

- 1.The State of Tamil Nadu,
Rep. By the District Collector,
Kanyakumari District at Nagercoil.
- 2.The Revenue Divisional Officer,
Padmanabhapuram,
Thuckalay Post,
Kanyakumari District.
- 3.The Tahsildar,
Vilavancode Taluk,
Kuzhithurai Post,
Kanyakumari District.



4.The Commissioner,
Kuzhithurai Municipal Corporation,
Vetumani Junction,
Marthandam,
Kanyakumari District.

- +1 CC to Mr.L.SHAJI CHELLAN, Advocate SR-85768.
- +1 CC to Mr.F.DEEPAK, Advocate SR-85806.
- +1 CC to Mr.S.C.HEROLD SINGH, Advocate SR-85791.
- +1 CC to GP SR-85901.
- +1 CC to Mr.S.TITUS, Advocate SR-85924.

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