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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

W.P. No. 35183 of 2019

N. Radhakrishnan

.. Petitioner

Versus

1. The State of Tamil Nadu
Rep.by the District Collector
Cuddalore District
Cuddalore 607 001
2. The Sub Collector
Vridhachalam - 606 001
3. The Tahsildar
Tittagudi Taluk
Tittagudi - 606 106
4. The Block Development Officer
Nallur Panchayat Union
Nallur - 606 302.
5. M.Arumugam Pillai

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents 1 to 3 namely The District Collector, Cuddalore, The Sub Collector, Vridhachalam and Tahsildar, Tittagudi to remove the wall built by Mr.Arumugam Pillai blocking the public path and provide free passage as requested by the petitioner in the representation dated 05.09.2019 & 25.09.2019 within a stipulated time as specified by this Court.



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For Petitioner : Mr. N. Radhakrishnan
(Party-in-person)
For Respondents : Mr. E. Balamurugan
Spl. Govt. Pleader R1 to R4
Mr.T.Sezhian
for Mrs.R.Meenal for R5

O R D E R

[Order of this Court was made by R.SUBBIAH, J]

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Mandamus directing the respondents 1 to 3 namely The District Collector, Cuddalore; The Sub Collector, Vridhachalam and Tahsildar, Tittagudi to remove the wall built by Mr.Arumugam Pillai blocking the public path and provide free passage as requested by the petitioner in the representation dated 05.09.2019 & 25.09.2019 within a stipulated time as specified by this Court.

2. It is the case of the petitioner that he is the resident of Eraiyur Village. In the said Village, earlier, in the year 1965, certain lands were acquired for establishing Aruna Sugar Mills. Adjacent to the Sugar Mills, a portion of the lands in Survey No.112 were sold to Indian Oil Corporation for running a petrol pump and in the remaining land in the said Survey Number, plots were sold to various individuals. These land are situated in the State Highway No.141 between Vridhachalam & Tittagudi. According to the petitioners, the individual owners who have purchased various housing plots have obtained approval from the Deputy Director of Town and Country Planning and the layout plan provides for various streets for the public use. The public roads shown in the layout were also in use for over 60 years and it is being maintained by the Panchayat. While so, due to construction of a flyover in the land in S.H. 141 across Pennadam Railway Station, the Petrol pump got closed in the year 2013 and the land was lying vacant. The owner of the land M. Arumugam Pillai of Kothattai Village, the fifth respondent herein, had spruced up the area and started fencing the area in S.F. No.112/4B1 by enclosing the public path. This was objected to by the Villagers inasmuch as the public path was in use for more than 100 years as water course and as public thoroughfare for over 50 years. Therefore, it is contended that by reason of the fencing over the public path, the public could not use the pathway for their ingress and egress. In this context, the petitioner sent representation to the official respondents. However, on 24.09.2019, the fifth



respondent built a wall closing the public path meant for the Villagers and thereby the petitioner and other Villagers were put to great inconvenience. Therefore, on 06.09.2019, the petitioner along with the Villagers met the third respondent and submitted a representation and requested to remove the wall put up by the fifth respondent. The fifth respondent was also requested by the officials of the office of the Tahsildar for removal of the wall on humanitarian grounds, but no fruitful results could be achieved, hence, the present writ petition.

3. The fourth respondent has filed a counter stating that even though the ownership of the land in question vests with the fifth respondent, it was used only as a public pathway for the past more than 30 years. Furthermore, the fifth respondent has not mutated the revenue records with respect to the public pathway and paid any property tax and therefore, he is not entitled to claim the land in question as his own property preventing the general public from having their ingress and egress to the other side of the road.

4. We have heard the counsel for both sides and perused the records. The petitioner claims that the land in question was used only as a public pathway by the Villagers for several years, while so, the fifth respondent ought not to have closed the public pathway by constructing a wall. Such a plea of the petitioner as to whether the land was used as a public pathway for several years or not cannot be gone into by this Court in exercise of the powers under Article 226 of The Constitution of India. While dealing with a writ petition, this Court cannot conduct a roving enquiry and to adjudicate as to whether the disputed land is classified as a public pathway in the revenue records or not. However, considering the submission of the learned counsel for the petitioner, without going into the merits of the case, the petitioner is directed to submit a copy of the representation dated 25.09.2019, within a period of one week from the date of receipt of a copy of this order, to the third respondent. On receipt of the same, the third respondent is directed to conduct an enquiry by affording an opportunity of hearing to the petitioner, fifth respondent and others concerned. On completion of such enquiry, the third respondent shall pass orders on merits and in accordance with law. If the third respondent finds that the public pathway is encroached by the fifth respondent, as alleged by the petitioner, the third respondent shall proceed to remove the encroachment in accordance with law. The entire exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.



5. With the above direction, the writ petition is disposed of. No costs.

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Sd/-
Asst.Registrar (CS VI)

/true copy/
Sub Asst. Registrar

dpq

To

1. The District Collector,
Cuddalore District,
Cuddalore 607 001.
2. The Sub Collector
Vridhachalam - 606 001
3. The Tahsildar,
Tittagudi Taluk,
Tittagudi - 606 106.
4. The Block Development Officer,
Nallur Panchayat Union
Nallur - 606 302.

+1 cc to M/s.R.Meenal Advocate sr8307
+1 cc to M/s.Government Pleader sr8625

WP No. 35183 of 2019

sj(co)
aa17/03/2020