



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.08.2020

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.P.(MD)No.7961 of 2020

and

W.M.P.(MD)No.7409 of 2020

WEB COPY

All the residents of
E.Malampatti-Puthuvalavu Village,
represented by
Thirunavukkarasu

...Petitioner

Vs.

- 1.The District Collector,
Office of the District Collector,
Madurai,
Madurai District.
- 2.The Tahsildar,
Office of the Tahsildar,
Melur Taluk,
Madurai District.
- 3.The Superintendent of Police,
Office of the District Police Office,
Alagarkovil road,
K.Pudur, Madurai-625 007.
- 4.The Inspector of Police,
Keelavalavu Police Station,
Madurai District.

5.S.Palaniyammal

6.S.Pushpavalli

...Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondents 3 and 4 to remove the illegal encroachments and hindrance made on the public pathway in E.Malampatti-Puthuvalavu Village, E.Malampatti Village Panchayat, Melur Taluk, Madurai District and to maintain the public peace in Puthuvalavu Village, considering the villagers' representation dated 16.06.2020.

For Petitioner : Mr.M.Sendhilkumar

For Respondents : Mr.M.Muthugeethaiyan

Special Government Pleader for R.1 to R.4

Mr.S.Mahesh Babu for R.5 & R.6



ORDER

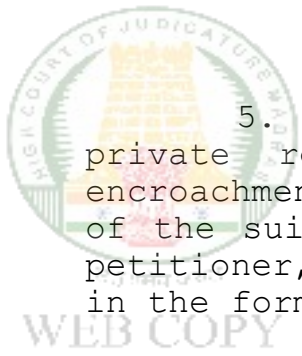
(Order of the Court was made by **M. SATHYANARAYANAN, J.**)

This writ petition styled as a Public Interest Litigation is filed by one M.Thirunavukkarasu, representing all the residents of E.Malampatti - Puthuvalavu Village and he would aver, among other things, that he has returned from Malaysia and after returning to the motherland, started doing agricultural activities and according to him, there are about 30 families residing in Puthuvalavu, E.Malampatti Village Panchayat, Melur Taluk, Madurai District. There exists a common pathway in the said place having a width of 14 feet and length of 300 meters.

2. It is the stand of the petitioner that all of a sudden, on 04.01.2020, the private respondents 5 and 6 and their husbands put *Prosopis Juliflora* (Seemaikaruvalm trees) on the public pathway situated in S.No.202/8, Puthuvalavu village, and in this regard, a police complaint was also lodged and the jurisdictional revenue officials caused inspection and despite that, nothing had happened. The petitioner has also submitted a detailed representation, dated 16.06.2020 in this regard and despite receipt and acknowledgment, no action whatsoever has been taken and therefore, he is constrained to approach this court by filing the present writ petition.

3. Heard the submissions of Mr.M.Sendhilkumar, learned Counsel for the petitioner, Mr.M.Muthugeethaiyan, learned Special Government Pleader appearing for the respondents 1 to 4 and Mr.S.Mahesh Babu, learned Counsel for the respondents 5 and 6.

4. The learned Counsel for the private respondents would submit that three suits in O.S.Nos.160 of 2001, 17 of 2002 and 205 of 2002 were filed by K.Manthayan and K.Soman; K.R.Gurusamy and Santha; and M.Karuppiah Thevar (died), Pushpavalli and K.Palaniammal, respectively and the Court of District Munsif, Melur, by common judgment dated 29.03.2005, had dismissed the suits in O.S.Nos.160 of 2001 and 17 of 2002 and decreed the suit filed by M.Karuppiah Thevar (died), Pushpavalli and K.Palaniammal, in O.S.No.205 of 2002 for declaration and consequential permanent injunction. The appeals preferred against the dismissal of both the suits in O.S.Nos.160 of 2001 and 17 of 2002 and decreeing of the suit in O.S.No.205 of 2002, in A.S.Nos.173 to 175 of 2005, also came to be dismissed by common judgment dated 20.04.2006 and further challenge has been made by filing the second appeals in S.A.(MD) Nos.672 to 674 of 2006 and the private respondents had also filed an Execution Petition to execute the decree dated 29.03.2005 in O.S.No.205 of 2002 on the file of the District Munsif, Melur, and challenging the said proceedings, C.R.P(NPD)(MD)Nos.442 and 443 of 2006, had also been filed.



5. It is the submission of the learned Counsel for the private respondents that the property, in which, there are encroachments as alleged by the petitioner, was the subject matter of the suits and unless the Second Appeal is allowed in toto, the petitioner, as of now, does not have any right to agitate his claim in the form of the alleged Public Interest Litigation.

6. It is further alleged by the learned Counsel for the private respondents that at the instance of the opposite parties, who are also parties to the civil litigation, the petitioner is espousing their cause and he has also drawn the attention of this Court to paragraph 10 of the affidavit filed in support of this writ petition wherein there are averments relating to civil proceedings and admittedly, the petitioner is not a party and unless the said information has been furnished by the opposite parties, he would not have disclosed the said fact and prays for the dismissal of this Public Interest Litigation with exemplary costs.

7. This Court has carefully considered the rival submissions and perused the materials placed on record.

8. The affidavit filed in support of this writ petition is bereft of any material particulars as to the claim of the petitioner that a portion of the land in S.No.202/8 of Puthuvalavu, E.Malampatti Village, is a public pathway. It is also to be noted that the petitioner is not a party to the above said civil proceedings and despite that, he is able to give the details of the civil proceedings and the only explanation offered by the learned Counsel for the petitioner is that one of the villagers had disclosed the said details and in the considered opinion of this Court, it is hardly believable.

9. It also appears that the petitioner is indirectly espousing the cause of the parties who had failed in their endeavour in the civil proceedings and therefore, the present litigation is nothing but a Private Interest Litigation.

10. This Court is also of the view that unless the Second Appeals are decided in favour of the appellants therein, as of now, no right would accrue in favour of the petitioner and other persons who are similarly placed like that of the petitioner and under the garb of this writ petition, challenge is made in the form of this collateral proceedings as to the findings rendered by the Court of competent civil jurisdiction in the above said civil proceedings.

11. This writ petition is devoid of merit and deserves dismissal and accordingly, the same is dismissed. Though this Court was inclined to impose costs, the learned Counsel for the petitioner would plead that believing public interest, the present writ petition is filed and prays not to impose costs and therefore, there



Consequently, the connected writ miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (crl.side)

WEB COPY

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

RSB

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The District Collector,
Office of the District Collector,
Madurai,
Madurai District.
- 2.The Tahsildar,
Office of the Tahsildar,
Melur Taluk,
Madurai District.
- 3.The Superintendent of Police,
Office of the District Police Office,
Alagarkovil road,
K.Pudur,
Madurai-625 007.
- 4.The Inspector of Police,
Keelavalavu Police Station,
Madurai District.

+1 CC to M/s.S.MAHESH BAU, Advocate (SR-14263[F] dated 17/08/2020)

+1 CC to M/s.Government Pleader (SR-14334[F] dated 18/08/2020)

+1 CC to M/s.M.SENDHIL KUMAR, Advocate (SR-14350[F] dated 18/08/2020)

W.P. (MD)No.7961 of 2020

and

W.M.P. (MD)No.7409 of 2020

14.08.2020