



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01-10-2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.13799 of 2016

And

WMP No.12112 of 2016

1.S.Masilamani Karthikeyan

2.S.Rajadurai Rajnikanth

.. Petitioners

vs.

1.The Burn Standard Company Limited,
(Now as Sail Refractory Company Limited),
Represented by its General Manager,
Salem - 636 302.

2.The Security Officer,
Burn Standard Company Limited,
(Now as Sail Refractory Company Limited),
Represented by its General Manager,
Salem - 636 302.

3.The Commissioner,
Salem City Municipal Corporation,
Salem.

.. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, forbearing the respondents 1 and 2 from objecting or interfering including the petitioner's right of transport by plying all kind of vehicles including Cranes, JCB, Poclain, Tippers etc., from the petitioner's factory at Jagirammalayam, Co-Magnasite Mines, Jagir Kaminaickepatti, Mottur Kattuvalavu, Salem District, now within the limits of Salem City Municipal Corporation to the main road National Highways Road (NH-47) through the public road running East-West and called Maankuppai Village Road.



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For Petitioner : Mr.Poovendhan for
Mr.R.Manickavel.

For Respondents-1&2 : Mr.A.Ilango

For Respondent-3 : No Appearance

O R D E R

The relief sought for in the present writ petition is to forbear the the respondents 1 and 2 from objecting or interfering including the petitioner's right of transport by plying all kind of vehicles including Cranes, JCB, Poclain, Tippers etc., from the petitioner's factory at Jagirammalayam, Co-Magnasite Mines, Jagir Kaminaickepatti, Mottur Kattuvalavu, Salem District, now within the limits of Salem City Municipal Corporation to the main road National Highways Road (NH-47) through the public road running East-West and called Maankuppai Village Road.

2. The counter-affidavit filed by the Chief Operating Officer, on behalf of respondents 1 and 2, states that the road existing in Survey No.9/6 is not a Public Road as allegedly stated, but it is a Private Road belongs to the first respondent. The first petitioner in his letter dated 02.02.2016 addressed to the second respondent seeking permission to allow his Crane without any objection to use the first respondent's road and consequently requested to give necessary instructions to the Checkpost Officer to allow his Crane to ply in the first respondent's road, on every Mondays, Wednesdays and Fridays.

3. It is stated that the plying of heavy vehicles like Crane, JCP affect the road as well as overhead lines and cause damage to the road and lines and as such the second respondent refused to give permission to allow the vehicles of the petitioners.

4. The petitioners sent another letter not to disturb the petitioners from using the said road. It is contended that the decree obtained in O.S.No.334 of 1985 dated 31.08.1990 relates to Survey No.16/2 and the said decree did not declare that the road in Survey No.16/2 is the Public Road.



5. Perusal of the counter-affidavit filed on behalf of respondents 1 and 2, would reveal that the petitioners seek permission in respect of Private Road, if there is any such dispute in respect of the Private Property/Road, the parties have to approach the Civil Court for resolving the issues. Contrarily, the High Court cannot adjudicate such similar rights, if any, exists between the parties under Article 226 of the Constitution of India.

6. Thus, the case of the petitioners to approach the Competent Forum to establish their civil rights, if any exists. Prior directions in the nature of an injunction not to obstruct the vehicle belongs to the petitioners cannot be granted, as such a right itself is disputed by the respondents. In such circumstances, an adjudication is required regarding the civil rights of the parties concerned.

7. Accordingly, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar

Svn

To

The Commissioner,
Salem City Municipal Corporation,
Salem.

+1CC to M/s.A.Elango, Advocate, SR.No. 51463

+2CCs to M/s.R.Manickavel, Advocate, SR.No. 51381

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NRL(CO)

B.VC (13/10/2021)