



W.P.No.14380 of 2021

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T.RAJA, J.
and
SATHI KUMAR SUKUMARA KURUP, J.

C.M.S. Educational Trust, represented by its Chairman C.Muthusamy, Marappanaickenpatty and Post, Namakkal District, had filed this writ petition seeking issuance of a writ of mandamus under Article 226 of the Constitution of India to direct the respondents 1 to 4 to remove the obstruction made by the fifth respondent in the eastern side of the panchayat road comprised in Survey Nos.241, 243 and 244 in Marappanaickenpatty Village, Namakkal Taluk, Namakkal District.

2.This writ petition was disposed of by this Court on 14.07.2021 with certain directions to the third and fourth Respondents and the case was directed to be listed "for reporting compliance" on 20.10.2021. The relevant portions of the order are extracted as under:

"6.In view of the same, the Third and Fourth Respondents are directed to conduct a joint inspection of the road comprised in S.Nos.241, 243, 244 situated at Marappanaickenpatty Village, Namakkal Taluk, Namakkal District after giving notice to the Petitioner, Fifth Respondent and the concerned parties and to see as to whether the width of the road has been reduced by the encroachment made by third parties including the



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Petitioner and Fifth Respondent and if it is found to be encroached, the Third and Fourth Respondents are directed to remove the encroachments after following the due process of law within a period of twelve weeks from the date of receipt of a copy of this order.

7. With the above directions, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

8. Post the matter for reporting compliance on 20.10.2021, failing which, the Respondents 3 and 4 shall appear before this Court."

3. In pursuance of the above direction, the case was listed before this Court on 20.10.2021, 12.11.2021, 18.11.2021 and 29.11.2021, 13.12.2021, 03.02.2022, 11.02.2022, 15.02.2022, 23.02.22, 28.02.2022, 07.03.2022. On 29.11.2021, this Court passed the following orders:

"The matter is today listed under the caption for "reporting compliance".

2. When the matter is taken up for hearing, at request of the learned counsel appearing for the petitioner Mr.C.K.M.Appaji, and Mr.L.S.M.Hasan Fikal, learned Additional Government Pleader appearing for the respondents, we hereby appoint Mr.R.Sundaramurthy, [Enrollment No.120 of 1976, Phone No.9840492107] as an Advocate Commissioner to note down the physical feature of the property in dispute.

3. The Advocate Commissioner shall note down the ingress and egress of the petitioner-Educational Institution. The learned Advocate Commissioner shall cause notice to the petitioner as well as the respondents and thereafter, inspect the property and file a report before this Court. The petitioner shall pay a sum of Rs.50,000/- (Rupees fifty thousand only) as initial



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remuneration to the learned Advocate Commissioner forthwith.

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4. Post the matter on 13.12.2021.”

4.In compliance of the above order, the Advocate Commissioner had filed his report on 06.01.2022. The third respondent had filed his action taken report dated 26.02.2022. The fourth respondent had filed counter on 01.03.2022 to the report of the Advocate Commissioner.

5.Today, when this case is listed under the caption “for reporting compliance”, Mr.C.K.M.Appaji, learned counsel for the petitioner reiterated the submission which was already made before this Court while the case was disposed of on 14.07.2021.

6.In reply, Mr.K.V.Sajeev Kumar, learned Special Government Pleader appearing for the respondents 1 to 4, by producing a copy of 'A-Register' and Gazette Village Map, submitted that the land in Survey No.243 is classified as Nathaikuttai (small pond).

7.Refuting the same, Mr.C.K.M.Appaji, learned Counsel for the Petitioner also, by producing a copy of the FMB sketch and Village Map obtained from the District Gazette, submitted that in Survey



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No.243 there are dotted lines which indicate the existence of a cart track.

9.On perusal of the documents and the submission made by both sides, the order of this Court dated 14.07.2021 has been complied with by the revenue officials. The compliance is recorded. However, since it is seen that there is a claim and counter claim made by both sides and considering that there is also a kuttai in Survey No.243, this Court is of the view that the subject matter of the dispute can be resolved only by the competent Civil Court.

[T.R.,J.] [S.S.K.,J.]
09.03.2022

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