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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 15.11.2021

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

W.P. No.8977 of 2020

Nagalakshmi

.. Petitioner

Versus

1. The District Revenue Officer,
District Collector Office,
Salem.
2. The Sub Collector,
Mettur, Salem District.
3. The Tahsildar,
Office of the Tahsildar,
Mettur, Salem District.
4. V.Balamurugan
5. The Assistant Director of Rural Development,
Salem.

.. Respondents

[R5, su-motu impleaded vide order of
this Court, dated 23.06.2021 in WP.No.8977 of 2020]

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Mandamus, directing the respondents 1 to 3 to take appropriate action to remove the encroachment caused by the 4th respondent and others over the public road comprised in SF.No.480/1 at Malijundam Village, Mettur Taluk, Salem District within an appropriate time.

For petitioner : Mr.R.Nalliyappan

For respondents
for RR1 to 3 & 5 : Mr.L.S.M.Hasan Fizal, AGP

ORDER

(The Order of the Court was made by K.KALYANASUNDARAM, J)

The Writ Petition is heard through video conferencing.

2. This Writ Petition has been filed for issuance of a Writ of Mandamus, directing the respondents 1 to 3 to take appropriate action to remove the encroachment in Survey No.480/1



at Malijundam Village, Mettur Taluk in Salem District.

3. The petitioner would state that a public road is in existence in Survey No.480/1 at Malijundam Village. The fourth respondent and others have initially encroached the public road and constructed a Mariamman Temple in the middle of the road and later they constructed a Vinayakar Temple, despite the fact that the petitioner and others objected the same. In this regard, a representation was made to the respondents, but no action has been taken.

4. The third respondent in the counter affidavit has denied the allegations made by the petitioner. A status report dated 20.08.2021, was filed as per the earlier order of this Court, in which, the third respondent has stated as follows:

"3. In the above matter the Hon'ble High Court directed the 2nd and 3rd respondents to file a report regarding the following queries.

A. Whether the road had been encroached upon by the 4th respondent and temples have been constructed illegally, in the subject property?

That there is no such encroachment in the Survey No.480/1 of Mallikundam Village made by the 4th respondent. The property in survey 480/1 to an extent of 0.47.0 Ares of Mallikundam Village specifically mentioned in Village "A" Register as Kovil. In that survey no. 480/1 Vinayagar temple, Marriyamman temple, Perumal temple and Navagraha temples are existing. These temples are existing in time in memorial. The old temples were in titled roof 10 years back. The tiled Roof removed and Constructed to terraced building. From the contribution of general public's, the terraced building was converted in to existing building not by new constructions. Already the road is existed in the southern side of the temple. Till now the existing road is used by the general public of Pallakadu of Mallikundam Village. The existing temple is old one of that locality. That there is no encroachment either by the 4th respondent or by the general public. On the south western side of the Mariyamman temple, the Vinayagar and Navagraha temple situates and on the eastern side of the temple, Pipal tree is existing, so there is no possibility to encroach the road portion. The road portion existing on the southern side of that tree alone.

B. Details of the Superstructure and extent to which the alleged public road has been encroached upon.



That there is no such encroachment or superstructure in the road portion are existed on the northern side as well as eastern side of the Pipal Tree. The Pipal Tree is older one on that locality.

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C. Whether the public well has been closed by the 4th respondent as referred in communication dated 22.01.2020 written by the Assistant Director of rural Development.

That there is no public well existed in survey 480/1 of Mallikundam Village. The 4th respondent did not close any public well in the survey no.480/1. Already regarding alleged well and the cart track the general public gave their statements. Regarding the Survey No.480/1, the general public gave statement, that nobody encroached the road portion, no well is existed in that property in survey no.480/1 and till now all are using the existing road, and there is no hindrance or disturbance to use the road portion. Till now the general public are using the same road to reach their properties. Nobody prevents to use the road including the Nagalakshmi family.

It is submitted that on 26.06.2021, myself along with VAO and RI visited the place and inspected the place as per the direction of this Hon'ble Court and also recorded the statement from the general public. It is specifically stated that all the allegation made by the petition in her affidavit is imaginary one and specifically stated that no encroachment has been made by any person as alleged by the petitioner. "

5. From the perusal of the counter affidavit and the status report, it is seen that four Temples viz., Vinayagar Temple, Marriamman Temple, Perumal Temple and Navagraha Temple have been in existence for time immemorial and the tile roof has been removed and concrete roof has been put up. The temples do not cause obstruction to the public. The lands, in which the Temples were constructed, are classified as Temple land in 'A' Register. Therefore, we are of the opinion that the petitioner has no merit in this Writ Petition. The Writ Petition fails and the same is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar



pvs

To

1. The District Revenue Officer,
District Collector Office, Salem.
2. The Sub Collector,
Mettur, Salem District.
3. The Tahsildar,
Office of the Tahsildar,
Mettur, Salem District.
4. The Assistant Director of Rural Development,
Salem.

W.P. No.8977 of 2020

PCH(CO)
SB(30/11/2021)