

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.03.2021

CORAM

THE HONOURABLE Mr. JUSTICE ABDUL QUDDHOSE

W.P.No.15727 of 2020

AND

W.M.P.No.19559 of 2020

K.Sujitha

.. Petitioner

Vs.

1.The Superintending Archaeologist
Archaeological Survey of India-Chennai Circle
Fort St. George
Chennai-9

2.The Conservation Assistant
Archaeological Survey of India
3B Parai Vattam
AVR Complex-I Floor
Alagapuram
Salem 636 016

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus directing the respondents to act within the powers conferred on them under Section 2(a)(iii) and (iv) of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 and remove the fencing now put up on the north of the Thennankudipalayam-Attur Road and install the same encircling the moat of the Getti Mudali Fort.

For Petitioner : Mr.T.Murugamanickam, Sr. Counsel
for Ms.Zeenath Begum

For Respondents : Mr.G.Karthikeyan
Standing Counsel

O R D E R

This writ petition has been filed seeking a writ of mandamus directing the respondents to act within the powers conferred on them under Section 2(a)(iii) and (iv) of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 and remove the fence, now put up on the north of the Thennankudipalayam-Attur

Road and install the same encircling the moat of the Getti Mudali Fort.

2. The only contention of the petitioner in this writ petition is that his access to his property has been totally blocked by the fence put up by the respondents under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 to protect the Fort, which is situated within the 100 meters radius.

3. A counter affidavit has been filed by the respondents denying the allegations of the petitioner that they have put up the fence in violation of the aforementioned statute. However, in paragraph No.9 of their affidavit, they have stated as follows :

"9. I submit that, regarding the averments made in para No.9, the petitioner land in S.No.119 is located away from protected area. Further it is kindly submitted that in a similar petition filed by Shri Kalaivanan, Attur (in S.No.119 Attur very adjacent to the petitioner land) this office has agreed to give openings for the access to Shri Kalaivanan's land (copy of counter in W.P.No.42 of 2020, by ASI enclosed). It is kindly suggested that this petitioner Ms.Sujatha can use the same pathway in S.No.119 to reach her land whenever necessary whose land is also in same survey number. Further, if the respondents provide another opening within this survey number, equal justice has to be done to owners of the other subdivisions adjacent to the petitioner's land and provide openings to their lands in the same survey number 119. Multiple openings in a small 100 meters of stretch will weaken the strength of the fencing and there will be no purpose of fencing the boundary."

4. Mr.T.Murugamanickam, learned Senior Counsel appearing for the petitioner, on instructions, would submit that if the respondents are willing to open the fence in front of Mr.Kalaivanan's property, who is none else than the petitioner's father, the petitioner has no objection for utilizing the very same access.

5.Mr.G.Karthikeyan, learned Standing Counsel appearing for the respondents, on instructions, would submit that the respondents will be willing to remove the fence put up in front of Mr.Kalaivanan's property, which is situated in survey No.119, within a period of two weeks and for this submission, Mr.T.Murugamanickam, learned Senior Counsel agrees.

6. For the foregoing reasons, this Court directs the 2nd respondent to comply with the undertaking given in paragraph No.9 of the counter affidavit filed before this Court, by removing the fence put up in front of Mr.Kalaivanan's property situated in survey No.119, Attur, to enable the petitioner to have vehicular access, adjacent to the petitioner's land, within a period of two weeks from the date of receipt of a copy of this order.

With the aforesaid direction, this writ petition is disposed of. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

gya

To

1.The Superintending Archaeologist
Archaeological Survey of India-Chennai Circle
Fort St. George
Chennai-9

2.The Conservation Assistant
Archaeological Survey of India
3B Parai Vattam
AVR Complex-I Floor
Alagapuram
Salem 636 016

+1 CC to M/S.Zeenath Begum, Advocate Sr No.18477

W.P.No.15727 of 2020

PMK(CO)
RG.19/03/2021