



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.10.2021

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM
AND
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

W.P. NO.18267 OF 2021

R.Periyasamy

.. Petitioner

Versus

1. The District Collector,
Collectorate,
Salem District.
2. The District Revenue Officer,
Collectorate,
Salem District.
3. The Revenue Divisional Officer,
Attur Taluk & Post,
Salem District.
4. G.Thangaraj

.. Respondents

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 herein to comply this Court order dated 09.12.2019 made in WP.No.34077 of 2019 and to remove the encroachment made by the 4th respondent herein, which is situated in S.No.573/2 & 573/5, which is situated in Paithur (North) Village, Attur Taluk, Salem District, within a time frame as may be fixed by this Court.

For petitioner : Mr.A.Rajkumar

For respondents

for R1 to R3 : Mr.T.N.C.Kaushik

for R4 : Mr.D.Shivakumaran

ORDER

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

The Writ Petition is heard through video conferencing.



2. The petitioner has come up with this Writ Petition for issuance of a Writ of Mandamus, directing the respondents 1 to 3 to comply with the order of this Court dated 09.12.2019 in WP.No.34077 of 2019.

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3. The case of the petitioner is that a pathway is in existence in Survey Nos.573/2 and 573/5, which are classified as Government Poramboke lands. The petitioner and his neighbours are using the said pathway and it has been encroached by the fourth respondent.

4. The learned counsel appearing for the petitioner Mr.A.Rajkumar would argue that despite the directions issued in the earlier Writ Petitions, encroachment has not been removed so far.

5. The learned counsel appearing for the fourth respondent Mr.D.Shivakumaran would state that the orders in the earlier Writ Petitions were passed without hearing the fourth respondent. According to the learned counsel, the petitioner herein instituted a suit in O.S.No.702 of 2004 before the District Munsif Court, Attur against the fourth respondent for permanent injunction on the ground that the fourth respondent is preventing watercourse in the land. The District Collector, who is one of the defendants in the suit, had filed a written statement stating that there is no Odai in the said land. After contest, the suit was dismissed on 10.11.2016.

6. It is further stated that aggrieved over the order passed by the Tahsildar, the fourth respondent preferred an appeal before the Revenue Divisional Officer. Against the dismissal of the appeal, a revision has been filed before the District Revenue Officer. Suppressing this material facts, the present writ petition is filed, hence on the sole ground, it is liable to be dismissed.

7. The learned Government Advocate, Mr.T.N.C.Kaushik on instructions would state that there is no Odai in Survey Nos.573/2 and 573/5 as stated by the petitioner. After disposal of the revision, the official respondents would take action in accordance with law.

8. It is seen from the records that in WP.No.4488 of 2019, though the petitioner prayed for a direction for removal of the alleged encroachment, this Court directed the appellate authority to dispose of the appeal preferred by the fourth respondent in the year 2018. As rightly pointed out by the fourth respondent, in the subsequent Writ Petition WP.No.34077 of 2019, a direction was issued without hearing the case of the fourth respondent.



9. Perusal of the affidavit filed in support of the writ petition reveals that no averment has been made in respect of the suit and the pendency of the revision filed by the fourth respondent before the District Revenue Officer. So, this Court is of the considered view that the petitioner has not come to this Court with clean hands and he is not entitled for any relief in this Writ Petition.

10. In the light of the above facts, we find no merit in the Writ Petition. Accordingly, the Writ Petition is dismissed. However, the official respondent shall take action in accordance with law depending upon the orders to be passed in the revision petition preferred by the fourth respondent, after providing opportunity to the necessary parties. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

pvs

To

1. The District Collector,
Collectorate, Salem District.
2. The District Revenue Officer,
Collectorate, Salem District.
3. The Revenue Divisional Officer,
Attur Taluk & Post,
Salem District.

+1CC to Mr.D.Shivakumaran, Advocate, Sr.No.52728

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PCH (CO)

K.RK. (10.11.2021)