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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.NO.23228 OF 2021

AND

W.M.P.NO.24526 OF 2021

N.Subramanian

... Petitioner

-Vs-

1. The District Collector
Tiruvallur District
Master Plan Complex
Tiruvallur-602 001.
2. The Tahsildar
Tahsildar Office
No.5, Trunk Road, Ettima Nagar
Poonamallee, Chennai-600 056.
3. The Block Development Officer
No.363/68, Villivakkam Panchayat Union
Office, Tiruttani Road, NH-205, Dobhi Colony
Kamarajapuram, Ambattur, Chennai 600 053.
4. The Village Administrative Officer
Vanagaram Village, Vanagaram-600 095.

... Respondents

Prayer :

Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the respondents to shift the place of dumping garbage from abutting northern side of petitioner's property measuring an extent of 11772 Sq.ft in Survey No.131/1B, Patta No.10486, as per Patta Survey No.137/7 situate at Jayalakshmi Nagar, Vanagaram Village, Ambattur Taluk, Tiruvallur District at using only common passage leading to patta land of the petitioner and building put up therein and allow the petitioner to continue to use the pathway leading to petitioner's property as easementary right enjoyed for past 13 years without any kind of hindrance and interruption in Survey No.289/1 at Jayalakshmi Nagar,



Vanagaram Village, Ambattur Taluk, Tiruvallur District to the abundant land situate in between Maduravoyal By-pass Road and Koovam river at Vanagaram or any other suitable property for dumping garbage.

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For Petitioner : Mr.K.M.Venugopal

For Respondents: Mr.A.Selvendran, Government Advocate

O R D E R

This writ petition has been filed for the issue of a writ of Mandamus forbearing the respondents from using the subject property for dumping the garbage, on the ground that the petitioner has an easementary right over the passage to access his property.

2. Heard Mr.K.M.Venugopal, learned counsel for the petitioner and Mr.A.Selvendran, learned Government Advocate appearing for the respondents.

3. In the considered view of this Court, the petitioner has knocked the doors of a wrong Court. The case of the petitioner is that, there is a pathway through which he is accessing his property and this pathway is admittedly a Poramboke land. The grievance of the petitioner is that the respondents are causing obstruction to that pathway by dumping the garbage. A careful reading of the affidavit filed in support of the writ petition shows that the petitioner is virtually claiming for an easementary right or right of way. The nature of the grievance that has been expressed by the petitioner cannot be dealt with by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The proper forum for this is the Civil Court and the petitioner can always establish his right of way before the Civil Court by rendering necessary evidence. The matter involves establishing of facts and appreciation of evidence and the same can be done only by a proper Civil Court. Therefore, liberty is granted to the petitioner to approach the competent Civil Court and work out his remedy in accordance with law. It is left open to the respondents to consider the representation made by the petitioner. If the same is not considered, the petitioner has to necessarily go before the competent civil Court.



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4. This writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

KST

To

1.The District Collector ,
Tiruvallur District,
Master Plan Complex,
Tiruvallur-602 001.

2.The Tahsildar,
Tahsildar Office,
No.5, Trunk Road,
Ettima Nagar, Poonamallee,
Chennai-600 056.

3.The Block Development Officer,
No.363/68, Villivakkam Panchayat Union
Office, Tiruttani Road,
NH-205, Dobhi Colony,
Kamarajapuram, Ambattur, Chennai 600 053.

4.The Village Administrative Officer,
Vanagaram Village,
Vanagaram-600 095.

+1cc to Mr.K.M.Venugopal, Advocate, S.R.No.55729
+1cc to the Government Pleader, S.R.No.56175

W.P.No.23228 of 2021

SJ(CO)
PM/17/11/2021