



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2021

CORAM

THE HON'BLE MR. JUSTICE PARESH UPADHYAY
AND
THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

W.A.No.2916 of 2021
and
C.M.P.No.19780 of 2021

1.S.Masilamani Karthikeyan

2.S.Rajadurai Rajinikanth

..Appellants

Vs

1. The Burn Standard Company Limited
(Now as SAIL Refractory Company Limited)
rep. By its Chief Operating Officer,
Salem - 636 302.

2. The Security Officer,
Burn Standard Company Limited,
(Now as SAIL Refractory Company Limited)
Salem - 636 302.

3. The Commissioner,
Salem City Corporation, Salem.

..Respondents

Appeal preferred under Clause 15 of Letters Patent against the order dated 01.10.2021 made in W.P.No.13799 of 2016.

Prayer in W.P.No.13799 of 2016: Writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a writ Mandamus forbearing the respondents 1 and 2 from objecting or interfering with the petitioners right of transport by plying all kind of vehicles including Cranes JCB Poclain Tippers etc. from the petitioners Factory at Jagirammappalayam Co-Magnasite Mines Jagir Kaminaickepatti Mottur Kattuvalavu Salem District now within the limits of Salem City Municipal Corporation to the main road National Highways Road (NH-47) through the public road running East West and called Maankuppai Village Road.

For Appellants .. Mr.R.Manickavel



JUDGMENT
(Delivered by PARESH UPADHYAY, J.)

Challenge in this appeal is made to the order dated 01 October 2021 recorded on W.P.No.13799 of 2016. The appeal is by the original writ petitioners.

2. Learned advocate for the appellants has submitted that the relief sought was to forbear respondents 1 and 2 from objecting or interfering including the appellants/ original petitioners' transport by plying all kinds of vehicles including Cranes, JCBs, Poclain, Tippers etc., from the appellants' factory. Learned advocate for the appellants has submitted that, whether it is a public road or not, according to him, there is no dispute as the civil court has already gone into that question and the decree, according to him was obtained by the person from whom the present appellants have purchased the property. It is submitted that the dismissal of writ petition on the ground of that being disputed question of facts needs to be interfered with. It is submitted that this appeal be entertained.

3. Having heard learned advocate for the appellants and having considered the material on record, this Court finds that the prayer of the appellants/ original writ petitioners are as under:

"Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, forbearing the respondents 1 and 2 from objecting or interfering including the petitioner-s right of transport by plying all kind of vehicles including Cranes, JCB, Poclain, Tippers etc., from the petitioner-s factory at Jagirammappalayam, Co~Magnasite Mines, Jagir Kaminaickepatti, Mottur Kattuvalavu, Salem District, now within the limits of Salem City Municipal Corporation to the main road National Highways Road (NH~47) through the public road running East~West and called Maankuppai Village Road."

4. Learned Single Judge, having considered the material on record including the contest put forward by the respondents, arrived at the conclusion that whether that can be said to be a public road or not, that itself is the fact which is in dispute. According to learned Single Judge, such a disputed question of fact could not be gone into in writ jurisdiction and therefore without granting any relief, the appellants are directed to



resort to other appropriate remedy.

5. We find that non interference by learned Single Judge, in this factual background, can not be said to be any error, which can be termed to be an error apparent on the face of record, which can be gone into by this Court in an intra-court appeal. We find that no interference is required.

6. Learned advocate for the appellant has also relied on the decision of the Supreme Court of India in State of Himachal Pradesh and another vs Umed Ram Sharma and others reported in 1986 (2) SCC 68. We find that, if the facts of the present case are kept in view vis-a-vis the said judgment, the same would not take the case of the appellants any further. That judgment therefore will not help the appellants.

7. In totality, the writ appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

mmi/2

To

1. The Chief Operating Officer,
The Burn Standard Company Limited
(Now as SAIL Refractory Company Limited)
Salem - 636 302.
2. The Security Officer,
Burn Standard Company Limited,
(Now as SAIL Refractory Company Limited)
Salem - 636 302.
3. The Commissioner,
Salem City Corporation, Salem.

+1cc to Mr.R.Manickavel, Advocate, S.R.No.64417

W.A.No.2916 of 2021

KV(CO)
RGA(21/12/2021)