



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
DATED: 03.02.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)No.15588 of 2020

J.Sankarkumar ... Petitioner

Vs.

1.The Commissioner,  
Tirunelveli Corporation,  
Tirunelveli.

2.The Assistant Commissioner,  
Melapalayam Zone,  
Tirunelveli.

3.V.Ramiah ... Respondents

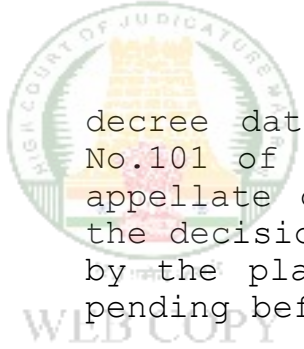
**Prayer:** Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 and 2 to implement the order of the first respondent dated 07.06.2019 and provide water supply connection and other basic amenities to the petitioner's house bearing Door No.9, Pandithurai 3<sup>rd</sup> Street, Kulavanigarpuram, Palayamkottai, Tirunelveli District.

|                 |   |                                                              |
|-----------------|---|--------------------------------------------------------------|
| For Petitioner  | : | Mr.H.Arumugam                                                |
| For Respondents | : | Mr.Aayiram K.Selvakumar<br>for R1 & R2<br>Mr.T.Selvam for R3 |

ORDER

Heard the learned counsel appearing for the petitioner, the learned standing counsel appearing for the respondent corporation and the learned counsel for the private respondent.

2.The petitioner owns the property bearing Door No.9, Pandithurai 3<sup>rd</sup> Street, Kulavanigarpuram, Palayamkottai. It originally belonged to his father. The petitioner's father has since settled the property in favour of the petitioner vide settlement deed dated 23.05.2012. The third respondent Ramiah is residing opposite to the petitioner's house. A narrow pathway separates the two houses. In respect of this pathway, a civil dispute is pending between the parties. Ramiah filed O.S No.204 of 2004 on the file of the Additional District Munsif Court, Tirunelveli seeking the reliefs of declaration and injunction. The



decree dated 07.09.2010. Questioning the same, Ramiah filed A.S No.101 of 2020 before the Principal Sub Court, Tirunelveli. The appellate court vide judgment and decree dated 22.02.2011 reversed the decision of the trial court and granted the decree as prayed for by the plaintiff. Challenging the same, SA(MD)No.434 of 2011 is pending before this Court.

3.The question that arises for consideration is whether the petitioner is entitled to water connection. The petitioner would point out that the corporation has already laid the main pipeline in the pathway in question and all that the corporation has to do is only to provide a sub connection to the petitioner's house from the said main pipeline which is located right in front of the petitioner's house.

4.The learned standing counsel for the corporation is ready to abide by the orders of this Court and he only states that in view of the objection raised by the private respondent, it was not possible to grant the relief sought for by the petitioner herein.

5.The learned counsel appearing for the third respondent strongly contested the very maintainability of the writ petition. He would point out that as on date the decree is very much operating in favour of the third respondent and against the writ petitioner. The jurisdictional civil court has declared that the pathway in question pertains to the third respondent. It has also granted injunction restraining the petitioner from interfering with the possession of the third respondent over the said pathway. He also pointed out that in the pending Second Appeal, the petitioner could not obtain any interim order in his favour. His core argument is that accepting the case of the petitioner would virtually nullify the civil court's decree that is standing in favour of the third respondent.

6.I carefully considered the rival contentions and went through the materials on record. It is a fact that as on date the civil court's decree is operating in favour of the third respondent. The civil court categorically declared that the pathway in question belongs to the third respondent. It has also granted a decree of injunction against the petitioner and in favour of the third respondent. It is to be noted that Tirunelveli Corporation is not a party to the civil proceedings. Therefore, the corporation authorities cannot be said to be bound by the decree obtained by the third respondent against the petitioner's father. When the factual question is when the pathway in question belongs to the third respondent, whether the corporation authorities can still draw the sub connection from the main pipeline implanted underneath the pathway. The learned standing counsel would point out that the pipeline was laid way back in the year 2001 while the civil proceedings were initiated only in the year 2006.



7. The right of any assessee to receive water connection from the local body subject to the resources constraint of the local body can never be in doubt. In the case on hand, the pipeline has already been laid by the corporation authority. All that is required is only drawal of sub connection of a very small length. When the petitioner has the right to receive water connection from the local body, the local body in turn is obliged to effect such a connection from the nearest point. Since the pathway in question belongs to the third respondent as of now, necessarily, the corporation authority has to invoke the power available under Section 222 of the Coimbatore City Municipal Corporation Act, 1981 which applies to Tirunelveli Corporation also. Section 222 of the Act reads as under :

**"222. Power to carry wire, pipes, drains, etc., through private property subject to causing as little inconvenience as possible and paying for direct damage.-**

The Commissioner may carry any cable, wire, pipe, drain or channel of any kind to establish or maintain any system of drainage, water-supply or lighting, through, across, under or over any road, street or place laid out for a road or street and after giving reasonable notice to the owner or occupier through, across, under, over, or up the side of, any land or building in the City and may place and maintain posts, poles, standards, brackets or other contrivances to support cables, pipes, channels, wires and lights on any pole or post in the City not vested in the Government and may do all acts necessary or expedient for repairing or maintaining any such cable, wire, pipe, drain, channel, post, pole, standard, bracket or other similar contrivance in an effective state for the purpose for which it is intended to be used, or for removing the same:

Provided that such work shall be done so as to cause the least practicable nuisance or inconvenience to any person:

Provided further that the Commissioner shall, with the sanction of the standing committee, pay compensation to any person who sustains damage by the exercise of such power."

8. Of course, the corporation may have to pay compensation to the third respondent. The Commissioner shall issue appropriate notice to the third respondent and determine the quantum of compensation. The petitioner has to necessarily bear all the incidental expenses that the corporation may have to incur in this regard. The entire exercise shall be completed within a period of twelve weeks from the date of receipt of copy of this order.



9.The writ petition is allowed. No costs.

Sd/-

Assistant Registrar (ADII)

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Sub Assistant Registrar(CS)

skm

**Note :** In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

**To:**

- 1.The Commissioner,  
Tirunelveli Corporation,  
Tirunelveli.
- 2.The Assistant Commissioner,  
Melapalayam Zone,  
Tirunelveli.

+1 CC to M/s.H.ARUMUGAM, Advocate ( SR-3256[F] dated 04/02/2021 )

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ES (CO)  
KB(22.02.2021) 4P 4C