



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 02.12.2021
PRONOUNCED ON : 08.12.2021
CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P(MD).No.17774 of 2021

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A.Sesammal

... Petitioner

Vs.

1.The District Collector,
Collectorate Office,
Tenkasi District.

2.The Revenue Divisional Officer,
Sankarankovil,
Tenkasi District.

3.The Municipal Commissioner,
Sankarankovil Municipality,
Tenkasi District.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the third respondent to remove the illegal construction of compound wall in the entrance of the petitioner's house which is blocking the pathway and make way to reach the main road and dispose of the representation dated 06.09.2021 made by the petitioner within the time limit that may be stipulated by this Court.

For Petitioner	: Mr.D.Selvanayagam
For R1 & R2	: Mr.D.Ghandiraj Special Government pleader
For R3	: Mr.P.Mahendran

ORDER

The writ petition has been filed in the nature of Mandamus, seeking a direction against the third respondent/Municipal Commissioner, Sankarankovil Municipality, Tenkasi District to remove the illegal construction of compound wall in the entrance of the house of the petitioner, which, according the petitioner, is blocking the pathway to reach the main road. The petitioner had also given a representation dated 06.09.2021, in this regard.

2.In the affidavit filed, the petitioner A.Sesammal, residing at No.45, Vadakatchiamman Temple 2nd Street, Sankaranakovil, Tenkasi District, had stated that she had been residing in the said address for the past 50 years and her house entrance is in this small pond, which joins Tirunelveli main road.



3.It is claimed that there is a 20 feet drainage in between the entrance and the road. She obtained permission from the the third respondent in 1979 to construct cement foot pathway over the 20 feet drainage. She also put up the cement foot pathway.

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4.She claimed in the affidavit that the third respondent had threatened to destroy the cement foot path. She filed O.S.No.350 of 2005, before the District Munsif Court, Sankarankovil and the suit was decreed on 05.04.2006. Thereafter, again on 14.12.2015, the third respondent issued a notice to demolish the cement foot pathway. She filed a contempt petition in the suit and it is claimed that it is still pending. She claimed specifically that she has no other entrance to reach the road. She gave a representation on 06.09.2021 to the second respondent, who had forwarded the same to the third respondent. Since no action had been taken, the writ petition had been filed by her.

5.A counter affidavit had been filed by the third respondent, in which, they have specifically stated that the land comprised in T.S.No.291/1, which is abutting the said pathway claimed by the petitioner is Sarkar poramboke/Street. It is under the control of the third respondent. It has been stated that it is vacant land. It had been stated that the petitioner and an other neighbourer, Muthaih had constructed building over the said vacant land and used the same. It had been stated that possession had been taken with much difficulty.

6.It has been very specifically stated that the petitioner's house faces east and there is a door way to that particular connecting street and that is the address of the petitioner. The cement foot pathway claimed by the petitioner is on the back side of the house and there is no necessity for the petitioner to use that pathway. It had also been stated that the only intention of the petitioner is to grab the vacant land abutting the cement foot pathway.

7.It had been further stated in the counter affidavit that the third respondent had permitted the petitioner to put the cement foot path over the existing open drainage and they have very categorically stated that they have no intention of destroying or demolishing that particular cement foot path.

8.An additional counter affidavit had been filed by the third respondent in which they stated that they are proposing to construct six buildings in the vacant space and a resolution had also been passed in that regard. These are shops will be constructed without causing damage to the cement foot path.



9.It had been very categorically stated that except to put the cement pathway, no further permission had been granted to the petitioner to use the vacant land as an access pathway to her house. The actual entrance is on the eastern side. It had therefore been stated that the writ petition should be dismissed.

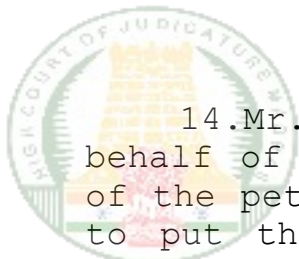
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10.Heard arguments advanced by Mr.D.Selvanayagam, learned Counsel for the petitioner, Mr.D.Ghandiraj, learned Special Government Pleader for first and second respondents and Mr.P.Mahendran for the third respondent.

11.Mr.D.Selvanayagam, learned Counsel for the petitioner, took the Court through the facts of the case and stated that in the year 1979, on 30.04.1979, by proceedings in Mu.Mu.No.774/79, the third respondent had specifically granted permission to the petitioner to put up the cement foot pathway from the western side of her house to the vacant land in Survey No.219/1. Since, there was a threat to destroy the said cement foot pathway, the petitioner had filed O.S.No.350 of 2005, before the Principal District Munsif Court, Sankarankovil and an ex-parte decree had also been granted on 05.04.2006. The petitioner had also filed E.P.No.51/2015, which is still pending. Learned Counsel stated that the petitioner's access to her house would be seriously prejudiced, if the third respondent destroys the cement foot path. He also stated that the third respondent should not be permitted to put up any construction in Survey No.219/1, which is the vacant land lying to the western side of the property of the petitioner.

12.In this connection, the learned counsel for the petitioner placed strong reliance on the judgment of a learned Single Judge of this Court reported in **2012(8) MLJ 41 (State of Tamil Nadu, represented by the District Collector, Erode and others vs D.Samiyathal)**. In that case, while examining the right of access to road, and after examining construction put up by the Government in the road margin and whether such construction obstructed the access to the property, a learned Single Judge had held that the public have the right to see that public street and road margins are kept for the purpose for which they are left and that local body or Government have no right to put up any construction so as to block the entry to adjacent properties from public road except constructions which are necessary for maintenance of street and road.

13.The learned Counsel therefore stated that the right of the petitioner should be recognized, and the writ petition should be allowed and respondents should not be allowed to put up any construction in survey No.219/1.



14.Mr.D.Ghandiraj, learned Special Government Pleader, on behalf of the first and second respondents stated that the right of the petitioner, is only subject to the right of the Government to put the vacant land to public use. The petitioner had been granted a limited right to put up a cement foot path from the back side/western side of her house to the vacant land in Survey No.219/1. The petitioner already had a regular entrance on the eastern side of her house at Vadakatchiamman Temple 2nd Street, which is the actual address of the petitioner. The learned Special Government pleader also stated that the petitioner had earlier encroached into the open space and put up various shops and they had to be removed by the third respondent.

15.It was further stated by the learned Special Government Pleader that the attempt of the petitioner was only to grab the land of the third respondent for personal and commercial use. The learned Special Government Pleader pointed out that the right of easement can be recognized only when there is no alternate way, but here the actual existing way is on the eastern side and therefore, the right of convenience of the petitioner cannot be examined. It has to be a right of necessity and the petitioner has no necessity to use this particular cement foot path which was provided to be put over the 20 feet drainage. The learned Special Government Pleader, therefore, insisted that the writ petition should be dismissed.

16.Mr.P.Mahendran, learned Counsel for the third respondent, also adopted the arguments advanced by the learned Special Government Advocate and also stated that the third respondent has passed a resolution to use that open space for the benefit of the general public and the petitioner cannot prevent such welfare activity from being conducted by the third respondent. The learned counsel also stated that the third respondent had put in lot of effort to remove the encroachments put by the petitioner and, stated that the petitioner lacks bonafide in filing the writ petition.

17.I have carefully considered the arguments advanced and pursued the records.

18.The address of the house of the petitioner is No.45, Vadakatchiamman Temple 2nd Street, Sankarankovil. This Street is on the eastern side of the petitioner's house. Therefore, the petitioner has access to the road from her house and there is no complaint on this regard.

19.On the back side/western side of the petitioner's house, an open space belonging to the third respondent/Sankarankvoil Municipality is available. That is categorized as Sarkar



Poramboke/Pathway. It is in Survey No.219/1. There is a 20 feet drainage canal between the western side boundary of the petitioner's house and the road. Naturally the petitioner cannot jump across the 20 feet drainage. In the year 1979, the third respondent had granted permission to put up a small cement foot path over the drainage to the petitioner. No further right had been granted to the petitioner. The land in Survey No.219/1 remains Sarkar Poramboke/Pathway under the control of the third respondent. The petitioner cannot claim any right, title or interest over the said land. The petitioner can only claim that this particular foot path put by her should not be destroyed. She cannot claim that the third respondent should not put up any construction in Survey No.219/1. That land is on the backside of the house of the petitioner. The front side of her house above faces Vadakatchiamman Temple 2nd Street, in which, the petitioner has a regular entrance.

20.The claim of the learned Counsel for the petitioner that the third respondent should not put up any construction in Survey No.219/1 has no merits whatsoever. The third respondent has every right to put up any construction in S.No.219/1, provided they do not destroy the existing cement foot path put up by the petitioner. By putting up any construction the third respondent are not blocking access to the house of the petitioner.

21.The access to the house of the petitioner is on the eastern side from Vadakatchiamman Temple 2nd Street. The petitioner should look forward. But, on the other hand it appears she had inculcated a habit to look backwards at the land which lies at the backside of her house. She claims a right over it. That cannot be permitted and encouraged. The petitioner can claim rights only on her house within the four boundaries. She must be satisfied with the entrance she has at Vadakatchiamman Temple 2nd Street.

22.It is not the case of the petitioner that the entrance from Vadakatchiamman Temple 2nd Street is obstructed by the respondents. There is no complaint in that regard. The petitioner rather, has concentrated on what is at the rear side of her house which is a vacant land, naturally, an attractive prospect for personal economical exploitation.

23.The judgment relied on, ***D.Samiyathal, referred supra by the learned Counsel for the petitioner***, is certainly distinguishable on facts. In that case, construction was sought to be put up in front of the house of the petitioner practically blocking or restricting the pathway to access the house. Here the construction is proposed on the rear side of the house. The front side remains as it always remained. There is no change. The petitioner should be satisfied with that particular aspect.



24. In **AIR 1956 Madras 584, Mariyayi Ammal and other Vs. Arunachala Pandaram**, it had been held, that to claim a right of way as an easement of necessity, it must be proved there was no other access to the property. Convenience is not the test, but absolute necessity was the test.

25. In this case, the petitioner does not require the entrance at the backside as an absolute necessity. There is already an entrance on the eastern side in Vadakatchiamman Temple 2nd street. At the backside/western side, since there was an open drainage, permission was granted to put up a cement foot path over the drainage. That right has been recognized by the Civil Court in the suit filed by the petitioner.

26. The third respondent has very clearly stated that they are not going to destroy this particular cement foot path.

27. At any rate the issue regarding that particular cement foot path is subject matter of the suit where E.P.No.51 of 2015 is still pending.

28. The third respondent has every right to put construction in a manner known to law over the vacant land in Survey No.219/1 in the rear side of the petitioner's house. By putting up any such construction there will not be any obstruction of the usual ingress and egress to the residence of the petitioner which is only through the Vadakatchiamman Temple 2nd Street.

29. The writ petition has been filed more than with an eye to some how lay claim on the vacant land in Survey No.219/1. It is seen that even on earlier occasion the petitioner had actually encroached into the said land. The petitioner has no right to claim any right over the said land .

30. The writ petition is misconceived. The writ petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

sn/lr

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

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presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The District Collector,
Collectorate Office,
Tenkasi District.

2.The Revenue Divisional Officer,
Sankarankovil,
Tenkasi District.

3.The Municipal Commissioner,
Sankarankovil Municipality,
Tenkasi District.

+1 CC to M/s.SPL GP (SR-37932[F] dated 09/12/2021)

+1 CC to M/s.D.SELVANAYAGAM, Advocate (SR-37938[F] dated 09/12/2021)

+1 CC to M/s.P.MAHENDRAN, Advocate (SR-38014[F] dated 09/12/2021)

W.P (MD) .No.17774 of 2021
08.12.2021

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