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WP(MD) No.13012 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD) No.13012 of 2014

& M.P.(MD) Nos. 1 of 2014 and 1 of 2015

AND Cont.P.(MD) No.1085 of 2014

(Through Video Conference)

WP(MD)No.13012 of 2014:

Marimuthu

...Petitioner

Vs.

1) The District Collector,
Madurai, Madurai District.

2) The Tahsildhar,
Thirumangalam Taluk Office,
Tirumanagalam, Madurai District.

3) Kallikudi Panchayat Union,
Panchayat Union Office,
Kallikudi, Thirumangalam Taluk,
Madurai District.

4) Villur Panchayat,
Through its President,
Villur Village, Thirumangalam Taluk,
Madurai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, forbearing the respondents from constructing building at Survey No.129/1 of Villur Village, Madurai District immediately on west of the petitioner's property.

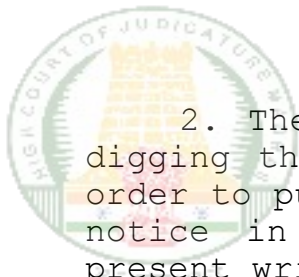
For Petitioner : Mr.B.Rajesh Saravanan
For RR 1 & 2 : Mr.M.Rajarajan,
Additional Government Pleader

For RR 3 & 4 : Mr.D.Muruganandham,
Additional Government Pleader

Advocate : Mr.E.MareesKumar
Commissioner

O R D E R

This Writ Petition has been filed for the issue of Writ of Mandamus forbearing the respondents from putting up any construction at S.No.129/1, which is the only pathway that is available to the petitioner for his ingress and egress to his property.



2. The case of the petitioner is that the respondents started digging the pathway which is the only access to the petitioner in order to put up a construction. The petitioner also had sent a legal notice in this regard. Since the same was not considered, the present writ petition has been filed before this Court.

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3. Heard Mr.B.Rajesh Saravanan, learned counsel for the petitioner, Mr.M.Rajarajan, learned Additional Government Pleader for respondents 1 & 2 and Mr.D.Muruganandham, learned Additional Government Pleader for respondents 3 & 4.

4. This Court while entertaining this writ petition had granted an interim order which continues till date. This Court also appointed an Advocate Commissioner to inspect the property and to file a report. It will be relevant to extract certain portions from the Commissioner's report hereunder:-

"4) I respectfully state that the above enumerated map may be treated as part and parcel of the report. I further state that the above enumerated enquiry revealed the fact that the public pathway has been obstructed by virtue of the construction undertaken by the 4th respondent. It is to be noted that the pathway to the petitioner's property is obstructed by virtue of the construction of activity undertaken by the 4th respondent. In this regard reference may be made to the report furnished by the field surveyor.

5) I respectfully state that, on Inspection of the site subject matter of the Writ Petition, I was able to observe that the building is being constructed by the respondents encroaching on the land classified as Pathway. I was also able to observe that the alternative way suggested by the Respondents is a very small narrow lane of a width of 8 feet and is not capable of being put to human commutation or usage as access way to the main road. From the records, I was also able to ascertain that the building that is being constructed by the respondents encroaching in the pathway, in fact blocks the very access road and is also being constructed without obtaining any planning permission and is an unauthorized construction as of today."

5. It is clear from the above report that the property in question has been classified as a 'pathway' and this is the main pathway through which the petitioner has to reach his property. That apart, it is also stated in the report that the building is attempted to be constructed even without getting the planning permission and the same is an unauthorised construction. The Advocate Commissioner has also filed the photographs and all the other relevant documents to substantiate his findings in the report.



6. The fourth respondent has filed a counter affidavit in this case. Even in the counter affidavit, it is admitted that the property in question has been categorised as a 'cart track poramboku'. According to the fourth respondent, this property is vested with the Panchayat and therefore, the Panchayat has the right to put up a construction.

7. During the pendency of the writ petition, inspite of the interim orders passed by this Court, the fourth respondent proceeded with the work and hence, a Contempt Petition was filed. This Court directed the fourth respondent to be present before the Court. The fourth respondent, thereafter gave an undertaking that he will not proceed further with any work.

8. In the considered view of this Court, the fact remains that the property in question, is a pathway / cart track. Therefore, it is not known as to how a building is being put up in such a property. Just because the property vests with the Panchayat, that does not mean that building can be constructed at any place. If the property has been shown as a 'Cart Track Poramboku', it has to be maintained in the same status. It is more so since it is an access road for persons residing in and around the area, including the petitioner. Looking at the case from any angle, this Court feels that the fourth respondent ought not to have proceeded further with the construction.

9. In view of the above discussion, the respondents are restrained from putting up any construction at S.No.129/1, Villur Village, Madurai District and the said property shall be continued to be treated as a 'cart track porambokku'. This Writ Petition is accordingly allowed. In view of the orders passed in this Writ Petition, the contempt petition is closed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD II)

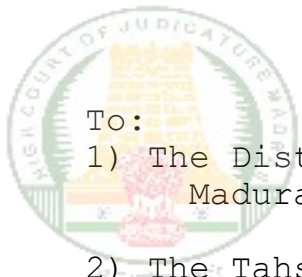
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Sub Assistant Registrar(CS)

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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 District Collector,
Madurai, Madurai District.
- 2) The Tahsildhar,
Thirumangalam Taluk Office,
Tirumanagalam, Madurai District.

+1 CC to M/s.SPL GP (SR-16928[F] dated 21/04/2021)

Order made in
W.P. (MD) No.13012 of 2014
and
Cont.P. (MD) No.1085 of 2014

KK(03.06.2021) 4P 4C

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