



WEB COPY



W.P.No.1475 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2022

CORAM :

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.1475 of 2022

1. S.Rathinam
2. S.Selvakumaran .. Petitioners

v.

1. The District Collector
Office of the District Collectorate
Namakkal

2. The Revenue Divisional Officer
Office of the District Collectorate
Namakkal

3. The Tahsildar
Rasipuram Taluk
Namakkal District

4. Mr.T.V.Balasubramaniam

5. Mrs.S.Prathiba Devi

6. Mr.Mohan



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7. Mr.Panneerselvam

.. Respondents

Petition under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents 1 to 3 herein to remove the encroachments made by the Respondents 4 to 7 into the pathway comprised in S.Nos.165/2B1, 168/3 & 168/4 in Singalanthapuram Village and in S.No.38/1 of Thoppapatti Village, Rasipuram Taluk, Namakkal District by considering the petitioners' representation dated 31.12.2021.

For Petitioners :: Mr.P.Paramasivadosh for
Mr.S.Senthil

For Respondents :: Mr.P.Muthukumar
State Government Pleader for
R1 to R3
Mr.K.K.Senthilvelan for R4 & R5
Mr.Amar D.Pandiya for R6 & R7

ORDER

(Order of the Court was made by the Hon'ble Acting Chief Justice)

Mrs.S.Rathinam, W/o Sengottaiyan and Mr.S.Selvakumaran, S/o Sengottaiyan have filed this writ petition under Article 226 of the Constitution of India seeking for issuance of a mandamus to the respondents 1 to 3 to remove the encroachments made by the respondents 4 to 7 in the pathway comprised in S.Nos.165/2B1, 168/3 & 168/4 in Singalanthapuram Village and in S.No.38/1 of Thoppapatti Village, Rasipuram Taluk, Namakkal



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District, by considering their representation dated 31.12.2021.

2. Learned counsel appearing for the petitioners, pressing into service the proceeding dated 04.08.2021 issued by the Revenue Divisional Officer, Namakkal, submitted that there is a finding given by the Revenue Divisional Officer, Namakkal as to the existence of the pathway in the survey numbers in question which has been encroached and the same shall be cleared.

3. But we are not inclined to go into the disputed questions of fact in a writ petition under Article 226. When the proceeding dated 04.08.2021 issued by the Revenue Divisional Officer, Namakkal clearly admits one another fact that the petitioners have also filed a civil suit in O.S.No.67 of 2020 on the file of the District Munsif Court, Rasipuram claiming easementary right over the land covered in the survey numbers in question and the same is also pending, the petitioners have to workout their remedy as per law only in the pending suit and not under Article 226 before this Court. Therefore, taking note of the fact that the petitioners have already filed the civil suit in O.S.No.67 of 2020 before the District Munsif Court, Rasipuram



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claiming easementary right over the land covered in the survey numbers in question, without going into the merits, we hereby direct the learned District Munsif, Rasipuram to dispose of the pending suit filed by the petitioners in O.S.No.67 of 2020 on merits and in accordance with law within a period of six months from the date of receipt of a copy of this order. With this direction, the writ petition stands disposed of. However, there shall be no order as to costs.

Speaking/Non speaking order

(T.R.,A.C.J.) (D.K.K.,J.)

Index : yes/no

31.10.2022

ss

To

1. The District Collector
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Office of the District Collectorate
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3. The Tahsildar
Rasipuram Taluk



Namakkal District

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THE HON'BLE ACTING CHIEF JUSTICE
AND
D.KRISHNAKUMAR,J.

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