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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.9035 of 2022

N.Sridhar

..

Petitioner

Vs.

1. The Commissioner
Nagapattinam Municipality
Nagapattinam District - 611 001.
2. The Tahsildar
Elancheran Nagar
NH 45A, East Coast Road
Nagapattinam District - 611 001.
3. Baskaran
4. Mohanraj
5. Arumugan

..

Respondents

Prayer: Petition filed under Article 226 of the Constitution of India prays for a writ of Mandamus directing the first respondent to remove the encroachment in the lands situated at S.No.272, Ward IV, Block No.8, Nagapattinam District.

For the Petitioner : Mrs.V.Srimathi



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For the Respondents : Mr.J.Ravindran
Additional Advocate General
Asstd. by
Mr.A.Selvendran
Special Government Pleader
For Respondent 2

Mr.P.Srinivas
Standing Counsel
For Respondent 1

ORDER

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

The writ petition has been filed seeking a direction to the first respondent to remove the encroachment in the land situated at Survey No.272, Ward IV, Block No.8, Nagapattinam District.

2. Learned counsel submits that the Survey No.272 belongs to a public way which has been encroached by respondents 3 to 5 by putting pillars. It has blocked the ingress and egress of the petitioner to approach the main road and therefore, the present writ petition has been filed. Referring to Sections 180 and 181 of the Tamil Nadu District Municipalities Act, 1920, it is submitted that it is the duty of the Municipality to provide ingress and egress to the person holding the land. There is a failure on the part of the first respondent to carry out the directions given under Sections 180 and 181 of the Act of 1920.

3. We have considered the submissions made by learned counsel for the petitioner and perused the records.

4. The revenue records relating to Survey No.272 does not show it to be a land of public way. Rather, it is of a private party. The aforesaid is coming out clearly from the revenue records, apart from the patta given to the private party for the said Survey No.272.

5. In view of the above, the petitioner has failed to prove land of Survey No.272 to be of public way. The writ petition has been filed with the pleading contrary to the records and it is at the stage when the petitioner remains unsuccessful in the Civil Suit No.122 of 2012 before the District Munsif



Court, Nagapattinam. The said suit for permanent injunction was dismissed and an appeal is pending.

6. The question of application of Sections 180 and 181 of the Act would come in play only when the petitioner could not have ingress and egress to the public way. The issue aforesaid cannot be decided in a writ petition requiring finding on facts. The petitioner otherwise availed the remedy before the Civil court in regard to the same land though alleging it to be against some other respondents, however, nothing has been stated to this effect in the writ petition. The effort of the petitioner is nothing but to multiply the litigation and that too, by giving incorrect and untrue facts regarding survey No.272, which is not of a public way, but it is a land of the private party.

7. In view of the above, the writ petition has not been filed by the petitioner with clean hands and hence, it is dismissed on merits and looking into the conduct of the petitioner, cost of Rs.5,000/- is imposed, which has to be deposited with the Tamil Nadu State Legal Services Authority within fifteen days from the date of receipt of a copy of this order. The Registrar (Judicial) would ensure the compliance of the said direction and if it is not made, the writ petition may be listed before the Court for appropriate order for compliance.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar

kpl/drm

To:

1. The Commissioner
Nagapattinam Municipality
Nagapattinam District - 611 001.
2. The Tahsildar
Elancheran Nagar
NH 45A, East Coast Road
Nagapattinam District - 611 001.



3.The Secretary,
Tamil Nadu State Legal Service Authority,
High Court, Chennai.

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Copy to:
The Registrar(Judicial)
High Court, Chennai.

+lcc to Mr.V.Raghavachari, Advocate SR.No.26249
+lcc to the Government Pleader, SR.No.26384

W.P.No.9035 of 2022

AD(CO)
CB(25/04/2022)