



W.P.(MD)No.18081 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.08.2022

CORAM:

THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**
and
THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

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P.Natesan

... Petitioner

Vs.

1.The District Collector,
Office of the District Collector,
Thanthonrimalai,
Karur District.

2.The Assistant Engineer,
Water Resource Department,
Public Works Department,
River Protection Division,
Old Government Hospital Road,
Karur District.

3.The Chief Engineer,
Water Resource Department,
Public Works Department,
P.B.No.803, Subramaniapuram,
Trichy.

4.K.Chinnasamy

5.K.Moorthy

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Mandamus, directing the Respondents 1 to 3 to remove the encroachments made by the Respondents No.4



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and 5 in “Popular Mudhaliar Vaikkal” Channel bund and also to clear the Blockage and obstruction made in the said channel situated in Kuppuchipalayam Village, Manmangalam Taluk, Karur District within a time frame fixed by this Hon'ble Court.

For Petitioner : Mr.S.I.Muthiah

For Respondents 1 to 3 : Mr.N.Satheesh Kumar
Additional Government Pleader

ORDER

(Order of the Court was made by **S.S.SUNDAR, J.**)

This Writ Petition is filed for issuance of a Writ of Mandamus, directing the Respondents 1 to 3 to remove the encroachments made by the Respondents No.4 and 5 in “Popular Mudhaliar Vaikkal” Channel bund and also to clear the Blockage and obstruction made in the said channel situated in Kuppuchipalayam Village, Manmangalam Taluk, Karur District within a time frame.

2. Heard Mr.S.I.Muthiah, learned counsel for the petitioner and Mr.N.Satheesh Kumar, learned Additional Government Pleader, appearing for the respondents 1 to 3. By



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consent of both parties, this Writ Petition is taken up for final disposal at the stage of admission itself.

3. Having regard to the order proposed to be passed in this writ petition, notice to the respondents 4 and 5 are dispensed with.

4. Brief facts that are pleaded by the petitioner in the affidavit filed in support of the writ petition, which are necessary for disposal of this Writ Petition, are as follows:

The petitioner is an agriculturist, having Nanja land at S.No.128, Kiraayur, Kuppuchipalayam Village, Manmangalam Taluk. In S.No.128, a Government Channel by name "Popular Mudhaliar Vaikkal is running from East – West to the entire stretch of S.No. 128, which serves the public. Though the channel runs across the patta lands in S.Nos.127 and 128, the local people in the vicinity use the channel bund as pathway to reach their houses. Since the channel is in existence from time immemorial and the same is used by the public as a path way to have access to their houses, the petitioner states that the Village people have a right to have access by prescription. The specific grievance of the petitioner is that the



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respondents 4 and 5, who hold the field in S.No.128 are obstructing the free flow of water in the channel and are preventing the public to use the bund to have access. Though the petitioner has given a representation dated 01.07.2022, to the second respondent to clear the encroachment and blockage in the channel and in the channel bund, stating that the official respondents had not taken any action on the complaint / representation of the petitioner, the petitioner has approached this Court with the above Writ Petition.

5. Relying upon the photographs produced, learned counsel appearing for the petitioner states that the respondents 4 and 5 have obstructed the bund by putting up some coconut leaves and other thorny substances to prevent free flow of water.

6. The alleged obstruction does not appear to be an encroachment. This kind of obstruction alleged cannot be monitored by the official respondents. It is very difficult to fix the responsibility on individuals, who may obstruct the pathway or bund by temporary means. Since the petitioner states that he has a right of easement by prescription, it is open to the petitioner to approach the civil Court and establish his right. It is also open to the



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petitioner to seek appropriate relief of permanent injunction or mandatory injunction so that the petitioner will be able to enforce such right by getting a declaratory relief as against the private individuals, who indulge in such obstructions. The petitioner may also file a civil Suit in a representative capacity, as he says that the channel bund is serving the public as a pathway.

7. In view of the above, the Writ Petition is closed with such liberty as stated above. No costs.

[S.S.S.R., J.] [S.S.Y., J.]
11.08.2022

Index : Yes / No

sj

To

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and

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sj

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