



W.P.(MD)No.19657 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED:25.08.2022

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

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K.Nagaraj

... Petitioner

Vs

1.The District Collector,
Theni District, Theni.

2.The Tahsildar,
Periyakulam Taluk,
Periyakulam, Theni District.

3.The Block Development Officer,
Periyakulam Panchayat Union,
Periyakulam, Theni District.

4.Subbaiyan

5.Ponnammal

6.Ganeswari

... 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 herein to take immediate action to remove the illegal encroachments made by the respondents 4 to 6 on the common pathway situated in Survey No.1986 so as to enable the petitioner to reach the Survey No.1984/2 at Tamaraikulam Village, Saruthuppatti, Periyakulam Talum, Theni District on the basis of the representation dated 27.01.2022.



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For Petitioner : Mr.J.Lawrence
For R-1 & R-2 : Mr.S.P.Maharajan,
Special Government Pleader
For R-3 : Mr.T.Amjad Khan,
Government Advocate

* * *

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 official respondents to remove the encroachment made by the respondents 4 to 6 in the common pathway situated in Survey No.1986 so as to enable the petitioner to reach his property in Survey No.1984/2 at Thamaraikulam Village, Saruthuppatti, Periyakulam Talum, Theni District, on the basis of his representation, dated 27.01.2022.

2. Heard Mr.J.Lawrence, learned counsel for the petitioner, Mr.S.P.Maharajan, learned Special Government Pleader, who takes notice for respondents 1 and 2 and Mr.T.Amjad Khan, learned Government Advocate, who takes notice for the third respondent.

3. The case of the petitioner is that his father had earlier filed a writ petition in W.P(MD)No.5050 of 2017. The said writ petition is for identical



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prayer and the same private respondents were also shown as respondents in the said writ petition. This Court by order, dated 23.01.2019, disposed of the writ petition with a direction to the official respondents to conduct an enquiry after issuing notice to the writ petitioner as well the private respondents and pass appropriate orders on merits. It is also observed that the second respondent Tahsildar should take action for removal of encroachment if there is any encroachment.

4. Now, the petitioner came forward with a representation to the official respondents, particularly, respondents 1 to 3. In the said representation, the petitioner has referred to the orders passed by this Court in the writ petition filed by the father of the writ petitioner in W.P(MD)No.5050 of 2017 stating that no action was taken pursuant to the orders of this Court earlier in the writ petition filed by his father. However, the petitioner has not stated any specific overt act or nature of encroachment by anyone by name. The representation is in the nature of request to remove the encroachment in the common pathway in Survey No1986.

5. From the photographs produced, this Court is able to see that there is a paver block road and some branches of a tree are dumped in a portion of



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the said road. The encroachment appears to be temporary and there was no allegation against anyone of the private respondents fixing the responsibility for such temporary obstruction by keeping the branches of a tree which was standing just abutting the public pathway.

6. Having regard to the fact that the direction issued by this Court earlier in the writ petition filed by the father of the petitioner is still in force, this Court is not inclined to give further directions especially having regard to the specific stand taken by the learned Special Government Pleader, on instructions, that the petitioner's father has not submitted any representation as directed this Court earlier. From the nature of encroachment as may be seen from the photographs, the petitioner is aggrieved by the presence of wooden branches and leafs that are seen in a portion of public road. The public road which is indicated by the petitioner is a road with paver blocks. There is no specific averments against any individual responsible for such temporary obstruction. It is open to the petitioner to seek appropriate remedy before civil Court against the private individuals by making specific allegations to remove the encroachments or for compensation for causing nuisance. It may not be possible for the official respondents to monitor such temporary obstructions that may be caused by private individual or to fix the responsibility. The road is



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still available for the petitioner. It may not be appropriate for this Court to direct the official respondents to remove the objects which are just leafs as well as some branches of a tree and nothing more.

7. Having regard to the peculiar facts and circumstances of the case, this Court is not inclined to issue direction except preserving liberty to the petitioner to approach the civil Court for appropriate remedy as against any private individual fixing accountability or responsibility and even making them liable for compensation in the manner known to law.

8. In the result, this writ petition is dismissed. No Costs.

[S.S.S.R., J.] [S.S.Y., J.]
25.08.2022

Index : Yes / No

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