



W.P(MD)No.23408 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P(MD)No.23408 of 2022

A.S.Sankar

... Petitioner

-Vs-

1.The District Collector,
Tirunelveli District,
Tirunelveli.

2.The Corporation Commissioner,
Tirunelveli Corporation,
Tirunelveli.

3.E.Nellaiyappan

4.R.Balu

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents herein to forthwith remove the encroachments in the



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“Government Poramboke” Pathway at S.No.1750, Block 8, Ward 7 of
Tirunelveli Corporation, Tirunelveli District.

For Petitioner : Mr.M.Maharaja
For R1 : Mr.J.Ashok
Additional Government Pleader
For R2 : Mr.S.P.Maharajan
Standing Counsel
For R3 : Mr.T.S.R.Venkatramana
For R4 : Mr.M.P.Senthil

ORDER

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

This Writ Petition has been filed for issuance of a writ of Mandamus, to direct the respondents herein to forthwith remove the encroachments in the “Government Poramboke” Pathway at S.No.1750, Block 8, Ward 7 of Tirunelveli Corporation, Tirunelveli District.

2. There is no representation for petitioner, despite the name of the petitioner's counsel is printed in the cause list. Considering the fact that



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the writ petition is filed alleging encroachment in the public property and it is turned out otherwise as per the report and the document produced before this Court, this Court is inclined to dispose of the matter on merits.

3. The case of the petitioner is that the people in Vellanthangi Pillayar Kovil Street and the neighboring locality are using the Government Poramboke pathway situated in Survey No.1750. It is the specific case of the petitioner that the land in Survey No.1750 is the Government Poramboke public pathway. The further case of the petitioner is that the private respondents, namely, 3 and 4, who were also residing in the said place, have encroached the said poramboke pathway and put up the constructions. Since the constructions put up by the private respondents are causing nuisance and obstruction to the public to use the pathway freely, the petitioner has come forward with the above writ petition in public interest.

4. Though the petitioner states that he is residing in Vellanthangi Pillaiyar Kovil Street, Tirunelveli Town, the encroachment alleged is in Venuvana Kumaran Kovil Street.



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5. The learned Additional Government pleader, on instructions, brought to the notice of this Court that the petitioner is not the person, who is residing or can use the property, for which, he claims right of access. It is the specific case of the learned Additional Government Pleader that the subject matter of the property is the private land of several individuals, who have put up own houses.

6. The learned counsel appearing for the contesting respondents has produced before this Court the judgment in O.S.No.72 of 2013 on the file of the District Munsif Court, Tirunelveli. It is their case that the maternal uncle of the petitioner, by name, Sankaran along with two others have filed a suit for permanent injunction and for mandatory injunction restraining the defendants therein from interfering with their right to use the suit property and for a mandatory injunction to remove the offending construction put up by the defendants. The plaint produced before this Court indicates that the properties in items 2 and 3 in the plaint schedule are the properties for which, the above writ petition is filed. The said suit was dismissed by the trial Court. As against the same, the plaintiffs preferred an appeal in A.S.No.42 of 2017 before the



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Sub Court, Tirunelveli. The said appeal was also dismissed on 16.08.2022.

7. From the reading of the plaint and judgment of the civil Court, this Court is of the view that the disputed property which is the subject matter of writ petition, is not the property of the plaintiffs in the suit nor the public street as it is contented by the petitioner. Since the property belongs to the individual, there is no scope for treating the same as public land or public street, so that, the official respondents could take any action either under the provision of the Tamil Nadu Land Encroachment Act or by resorting to the provisions of the Tirunelveli City Municipal Corporation Act, 1994. Therefore, this Court is unable to find any merit in this writ petition.

8. Hence, this Writ Petition is dismissed. No costs.

(S.S.S.R., J.) & (S.S.Y., J.)

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Index : Yes / No

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S.S.SUNDAR, J.

AND

S.SRIMATHY, J.

cp

To

The District Collector,
Tirunelveli District,
Tirunelveli.

ORDER MADE IN

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25.08.2022