



W.P. No.2394 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN

and

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

W.P. No.2394 of 2020

S. Chokkalingam

Petitioner

v

1 The District Collector
Thiruvarur District
Thiruvarur

2 The Tahsildar
Taluk Office
Tiruthuraipoondi

3 Malarkodi

Respondents

Writ Petition preferred under Article 226 of the Constitution of India seeking a writ of mandamus directing the respondents 1 and 2 to remove the encroachment in the Panchayat pathway which was encroached by the third respondent in respect of place bearing Survey No.170/1A5, 170/3, 170/B, 170/2 and 170/5 Melakadu Village, Thillaivilagam, Tiruthuraipoondi Taluk, Thiruvarur District.

For petitioner
For RR 1 & 2

Mr. D. Rajagopal
Mr. A. Selvendran
Special Government Pleader
Mr. S. Senthamil Selvan

For R3

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ORDER

(made by S. VAIDYANATHAN, J.)

The petitioner seeks a mandamus directing the official respondents to remove the encroachment made by the private respondent in the Panchayat pathway in Survey No.170/1A5, 170/3, 170/B, 170/2 and 170/5 Melakadu Village, Thillaivilagam, Tiruthuraipoondi Taluk, Thiruvarur District.

2 According to the petitioner, his father and four other persons, gifted the pathway in question in 2003 to the Panchayat Union, from which period, the pathway has been maintained by the Panchayat Union; while so, the third respondent has encroached the pathway, thereby making the petitioner and others take an alternative route to reach the main road; hence, seeking to remove the encroachment made by the third respondent, the petitioner's father had given as many as four representations on 31.12.2014, 14.01.2015, 18.12.2017 and 28.02.2019 to the authorities concerned, but, to no avail; the petitioner also, for his part, addressed a representation to the first respondent on 05.08.2019 with the result being the same; hence, this writ petition for the relief stated above.



3 In support of his contention that the place in the survey numbers concerned is a pathway, the learned counsel for the petitioner has placed reliance on the certificate given by the ex-President of the Thillaivilagam Panchayat Union, wherein, it is clearly mentioned that the place in question is used as pathway.

4 But, according to the learned counsel for the third respondent, there is no encroachment and the property in question belongs to her.

5 However, it is brought to the notice of this Court that the Tahsildar, Muthupettai, has addressed a communication dated 13.12.2023 to the learned Government Advocate stating that the lands in Survey Nos.170/1A5, 170/3, 170/1B, 170/2 and 170/5 are all patta lands and that there are no records to show that the place in question is a pathway.

6 Perhaps, the third respondent would not have put up a compound wall surrounding her property which has resulted in the public using it as a pathway. In our opinion, what the petitioner seeks is nothing short of easementary right which cannot be gone into in a writ petition.



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S. VAIDYANATHAN, J.

and

K. RAJASEKAR, J.

cad

In such perspective of the matter, giving liberty to the parties to work out their remedy before the appropriate forum, we close this writ petition. It is made clear that the aforesaid observations are made only for the limited purpose of deciding this writ petition. No costs.

**(S.V.N., J.) (K.R.S., J.)
14.12.2023**

cad

- 1 The District Collector
Thiruvarur District
Thiruvarur
- 2 The Tahsildar
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