



W.P.No.5818 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2023

CORAM :

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

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C.Mohan Kumar

... Petitioner

Versus

- 1.The District Collector,
Office of the District Collectorate,
Namakkal.
- 2.The Revenue Divisional Officer,
Office of the District Collectorate,
Namakkal.
- 3.The Tahsildar,
Rasipuram Taluk, Namakkal District.
- 4.Mr. T.V. Balasubramaniam
- 5.Mrs. S. Prathiba Devi
- 6.Mr. Mohan
- 7.Mr. Paneerselvam

... Respondents



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WEB COPY 2. *Mr.Sukumaran*, learned Counsel appearing on behalf of the petitioner would submit that there is a cart track-pathway running through the above said survey numbers, therefore, the action of the respondents in putting up obstructions by way of gate, fencing, etc., cannot be permitted and the same has to be removed and the pathway has to be maintained.

3. On the contrary, *Mr.P.Muthukumar*, learned State Government Pleader, appearing on behalf of respondents 1 to 3, would submit that the survey numbers in S.Nos.165/2B1, 168/3, and 168/4 in Singalanthapuram Village, Rasipuram Taluk, Namakkal District and S.No.38/1 of Thoppapati Village are all Patta lands and therefore, on an earlier occasion in W.P.No.1475 of 2022, when two other petitioners approached this Court for the self-same relief, this Court, by order dated 31.10.2022 after taking note of the order issued by the Revenue Divisional Officer on 04.08.2021 under Section 145 of the Code of Criminal Procedure, directed that if at all the parties are claiming any easementary right, they can agitate their grievances in the pending suit O.S.No.67 of 2020 and dismissed the said



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Writ Petition. It is the contention that the very same prayer is again made before this Court, therefore, this Writ Petition also should be disposed of on the same lines.

4. Replying to the said submissions, *Mr.Sukumaran*, learned Counsel for the petitioner would submit that what is claimed in the present case is not only an easementary right but their existing pathway in the above said survey numbers as 'Nilaviyal Vandipathai' in the private lands. Hence, the same has to be maintained by the respondents and he would submit that the same has not been brought to the notice of this Court in the earlier Writ Petition proceedings.

5. We have considered the rival submissions made on behalf of either sides and perused the material records of this case.

6. Firstly, after considering the very same facts, this Court had in the earlier occasion in W.P.No.1475 of 2022 passed the following order :-

“3. But we are not inclined to go into the



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disputed questions of fact in a writ petition under Article 226. When the proceeding dated 04.08.2021 issued by the Revenue Divisional Officer, Namakkal clearly admits one another fact that the petitioners have also filed a civil suit in O.S.No.67 of 2020 on the file of the District Munsif Court, Rasipuram claiming easement right over the land covered in the survey numbers in question and the same is also pending, the petitioners have to workout their remedy as per law only in the pending suit and not under Article 226 before this Court. Therefore, taking note of the fact that the petitioners have already filed the civil suit in O.S.No.67 of 2020 before the District Munsif Court, Rasipuram claiming easement right over the land covered in the survey numbers in question, without going into the merits, we hereby direct the learned District Munsif, Rasipuram to dispose of the pending suit filed by the petitioners in O.S.No.67 of 2020 on merits and in accordance with law within a period of six months from the date of receipt of a copy of this order. With this direction, the writ petition stands disposed of. However, there shall be no order as to costs. ”

7. Therefore, the same holds good in respect of the petitioner also.

Thus, apart from giving liberty for the petitioner to agitate his grievances in the Civil suit, since it is also contented that the existence of pathway is in Revenue Records, and since we find that the same is the subject matter under Section 145 of Cr.P.C., proceedings, which is now pending, we also



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direct the second respondent to conclude the said Section 145 of Cr.P.C., proceedings pending in M.C.No.12 of 2020 before the Executive Magistrate-cum-Revenue Divisional Officer, Namakkal, in accordance with the law, within a period of six weeks from the date of receipt of a copy of this order.

8. The Writ Petition is disposed of with the above directions. There shall be no order as to costs.

(T.R.,A.C.J.) (D.B.C, J.)
27.02.2023

Index : yes/no
Speaking / Non-Speaking order
Neutral citation : yes/no

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To

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**THE HON'BLE ACTING CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY, J.,**

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