

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.09.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.19497 of 2020

1.S.Gnanambal
2.P.Shanmugavelayutham

... Petitioners

Vs.

1.The District Collector,
District Collectorate Office,
Virudhunagar.
2.The Tahsildar,
Rajapalayam Taluk,
Virudhunagar District.
3.Block Development Officer,
Samusigapuram Village Panchayat,
Rajapalayam Taluk,
Virudhunagar District.
4.The President,
Samusigapuram Panchayat,
Rajapalayam Taluk,
Virudhunagar District.

5.Moorthi
6.Ganesan

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a *Writ of Mandamus*, to direct the respondents 1 and 2 to preserve and maintain the properties situated in Survey nos. 514A/6A, 6B, 514A/3B5B1, 3B5B2, 514A/4D as mentioned in the layout of Housing Plots in Samsugiapuram Village and in the gift deeds, dated 03.02.2005 as common pathway and consequentially, restraining the respondents 5 and 6 from encouraging or putting up any construction in the common pathway which would obstruct the people using it to reach their patta lands.

For Petitioners : Mr.M.Chinnadurai
for Mr.R.Selvaraj
For R1 to 4 : Mr.A.K.Manikkam
Special Government Pleader
Advocate Commissioner : Mr.P.Balamurugan

ORDER

This writ petition is filed for writ of Mandamus, to direct the respondents 1 and 2 to preserve and maintain the properties situated in Survey nos. 514A/6A, 6B, 514A/3B5B1, 3B5B2, 514A/4D as mentioned in the layout of Housing Plots in Samsugiapuram Village and in the gift deeds, dated 03.02.2005 as common pathway and consequentially, restraining the

respondents 5 and 6 from encouraging or putting up any construction in the common pathway which would obstruct the people using it to reach their patta lands.

2. The petitioners are having agricultural lands in Survey Nos.514A 2, 3A4C, 514A 2, 3A4D, 514A 2, 3A4F, 514A 23A4E to the extent of 2 acres and he is maintaining the said lands as coconut grove. But the nearby lands were divided into housing plots and the layout is unapproved. One Ramasamy Mooppanar and his wife Sivapackiyam have put up house in their land. And one one Muthiah Thevar had put up house in his land. The respondents 5 and 6 have purchased the Plot No.48 and Plot No.69 situated in second cross street and 3rd cross street. They have put up construction by encroaching the common pathway and also constructed sewage canal. The encroachers are threatening the petitioners, whenever the petitioners are using the said common pathway to approach his agricultural land. Therefore, the petitioners submitted a representation to the respondents to take steps to remove the encroachments.

3. The learned Special Government Pleader appearing for the official

respondents submitted that there is no encroachment. Since the petitioners vehemently opposed to the said submission, this Court appointed an Advocate Commissioner vide an order, dated 24.08.2023. The Advocate Commissioner after visiting the spot has filed a report wherein it is stated that as per original layout 16 feet pathway is available. However, the 5th respondent has encroached 3.25 feet and has put up footsteps to his house and also constructed sewage tank. The others have encroached 2.25 feet and has planted two trees, thereby, 16 feet pathway was encroached to the extent of 5.5 feet.

4. After perusing the report of the Advocate Commissioner, this Court is of the considered opinion that planting trees cannot be considered as encroachment. But the footsteps and the sewage tank are encroachments. Even the sewage tank may not be hindering the free flow of traffic. However, the petitioners are using agricultural tractor which is heavy vehicle may cause damage to the sewage tank. Therefore, the petitioners' apprehension is that if he is using the common pathway where the sewage tank is there and if damage is caused to the sewage tank, the individual respondents would claim

compensation. Hence prayed to direct respondents 5 and 6 either to remove the sewage tank or in case any damage is caused due to tractor, the respondents 5 and 6 are not entitled to claim any damages.

5. Therefore, the respondents 3 and 4 are directed to visit the spot and if there is any encroachment like footsteps, the same shall be removed. The said exercise shall be completed within a period of three months from the date of receipt of a copy of this order. As far as the sewage tank is concerned the private respondents are at liberty to shift the same his own place. If any damage is caused due to usage of tractor, the private respondents are not entitled to any damage.

6. With the above said observation, the writ petition is disposed of. No costs.

11.09.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No

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S.SRIMATHY, J.

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