



W.P(MD)No.14079 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.09.2023

CORAM:

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

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Chithirai Selvi

... Petitioner

-VS-

- 1.The District Collector,
Tirunelveli,
Tirunelveli District.
- 2.The Sub-Collector,
Seranmahadevi,
Tirunelveli District.
- 3.The Revenue Divisional Officer,
Radhapuram,
Tirunelveli District.
- 4.The Deputy Superintendent of Police,
Valliyoor,
Tirunelveli District.
- 5.Bhaskar

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondent No.4 to execute the order of the respondent No.2 in M.C.No.Aa1/14/223 dated 14.03.2023 and direct the respondent No.1 to monitor the execution proceedings of respondent No.4.



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For Petitioner : Mr.J.Senthil Kumar
For Respondents 1 to 3 : Mr.J.K.Jeyaseelan
Government Advocate
For 5th Respondent : Mr.K.Jeyamohan

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, directing the respondent No.4 to execute the order of the respondent No.2 in M.C.No.Aa1/14/223, dated 14.03.2023, and direct the respondent No.1 to monitor the execution proceedings of respondent No.4.

2. The petitioner is working as Village Assistant at Therku Kallikulam Village. Therefore, he is expected to know the nature of property around him. It is seen that the petitioner has no consistent case with regard to the character of the property, which is the subject matter of this lis. The petitioner claims that the property in S.No.161/8C3, Samugarengapuram, Radhapuram Taluk, Tirunelveli District, is one which was allotted to him by the elders of the family. It is the case of the petitioner that the petitioner has obtained electricity service connection and put up a construction, which is also assessed to property tax.

3. The grievance of the petitioner is that the fifth respondent has blocked the public road, which is adjoining the petitioner's house and



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constructed a compound wall. The petitioner, therefore, approached the second respondent to remove the obstructions caused by the fifth respondent. Stating that since the respondents though conducted an enquiry and found that the pathway is meant for public failed to take action, the above Writ Petition is filed.

4. A counter affidavit is filed on behalf of the revenue officials indicating that the common pathway in S.No.163/1B2B1 is the patta land of private owners, including the fifth respondent. It is also stated that the pathway which runs through one of the land belonging to joint Pattadars is common only to the joint owners. The counter affidavit filed by the fifth respondent also indicates that there is a dispute with regard to the character of the property as to whether it is a public road vests with the local body or the revenue department or the common pathway, which is confined to joint pattadars in favour of whom revenue records recognizes ownership.

5. Referring to several documents that are registered, the learned counsel appearing for the fifth respondent pointed out that the petitioner has filed the Writ Petition suppressing the material facts, including the suit that has been filed by the fifth respondent seeking permanent injunction against the writ petitioner and others in respect of the private pathway.



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6. Having regard to the nature of the dispute, this Court is unable to accept the case of the petitioner that it is a public road, which vests with the local body so that any one will have access through the same. In the absence of any evidence, till such time the civil Court declares the character of the property as a public road, the contention of the petitioner cannot be considered. Despite disputed questions of facts involved, the petitioner has chosen to file a Writ Petition, claiming right of using the pathway, which according to the fifth respondent runs through their joint land owned by the fifth respondent and others.

7. The fifth respondent has relied on records to show that the petitioner himself has entered into an agreement with another person claiming joint ownership over the common pathway. In such circumstances, the petitioner who has no consistent case cannot seek a mandamus, directing the respondents to remove encroachment. It is open to the petitioner to establish his case before the civil Court by getting a declaration as to the character of the property and the consequential injunction, he may be entitled to, upon proving his right of easement.

8. With the liberty so preserved to the petitioner, this Writ Petition is dismissed. No costs.

[S.S.S.R, J.]

[D.B.C., J.]

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Index : Yes / No

Neutral Citation : Yes / No

sj



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