



W.P.(MD)No.16515 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 01.08.2023

CORAM:

THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**

and

THE HONOURABLE **MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.P.(MD)No.16515 of 2021

K.Habib Rahman

... Petitioner

Vs.

1.The District Collector,
Ramanathapuram District.

2.The Tahsildar,
Ramanathapuram Taluk,
Ramanathapuram District.

3.The Executive Officer,
Town Panchayat,
Mandapam,
Ramanathapuram District.

4.K.S.Buhari

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Mandamus, directing the 3rd Respondent to remove the encroachment made by the 4th respondent in a public passage that comprised in Survey No.998/27, East Street, Mandapam, Ramanathapuram District and consequently direct the 3rd respondent to ensure that the public passage ad-measuring the length and width of 5 x 3 meters would be completely available to other residents of the east street, Mandapam, Ramanathapuram District.



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For Petitioner : Mr.A.Balaji

For Respondents 1 to 3 : Mr.M.Lingadurai
Special Government Pleader

For 4th Respondent : Mr.R.Maheswaran

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ORDER

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

The petitioner has filed the Writ Petition for issuance of a Writ of Mandamus, directing the 3rd Respondent to remove the encroachment made by the 4th respondent in a public passage that comprised in Survey No.998/27, East Street, Mandapam, Ramanathapuram District, and consequently to direct the 3rd respondent to ensure that the public passage ad-measuring the length and width of 5 x 3 meters would be completely available to other residents of the east street, Mandapam, Ramanathapuram District.

2. Heard Mr.A.Balaji, learned counsel for the petitioner, Mr.M.Lingadurai, learned Special Government Pleader, appearing for the respondents 1 to 3 and Mr.R.Maheswaran, learned counsel for the fourth respondent.



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3. This Court after hearing both sides, appointed an Advocate Commissioner to visit the pathway in S.No.998/27, to take measurement and file a detailed report as to who has encroached the pathway. Accordingly, the learned Advocate Commissioner has filed his report stating that apart from the 4th respondent encroachments are made by several others. However, the other encroachers are not made as parties to the Writ Petition.

5. It is stated that the property in question is classified as Natham. Therefore, Tahsildar should ascertain first as to whether the property is vested with the Government. Unless there are revenue records to show that any portion which is in the enjoyment of the residents can be classified as communal land the property will not vest with the Government so as to proceed on the basis that it is a public property, namely poramboke land. The Tahsildar based on the revenue record, field inspection may decide as to the character of the pathway, whether it is a public pathway or private pathway in which only the persons who have residential houses on either side of the pathway have access.

6. In such circumstances, the Writ Petition is disposed of directing the 2nd respondent to conduct a survey in the presence of the petitioner, respondents



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3 and 4 and other persons who have allegedly encroached the pathway after issuing notice to them and find out whether they have encroached into any portion of the public pathway. After conducting survey, if it is found that it is a public pathway, the second respondent shall draw a report about the extent and manner of encroachment, if any, and sent the report to the petitioner, respondents 3 and 4 and the other encroachers. Depending upon the report, the respondents 2 and 3 shall take appropriate proceedings as against the encroachers for removal of encroachment, if it is found that any portion of the public pathway is being encroached, under the Tamil Nadu Land Encroachment Act, 1905, following the procedures in the manner provided under the said Act and the Rules framed thereunder. The whole exercise shall be completed within a period of six weeks from the date of serving the survey report to the parties as indicated above. Parties may also approach the civil Court for infringement of their civil rights. No costs.

[S.S.S.R., J.] [D.B.C., J.]
01.08.2023

NCC : Yes / No

Index : Yes / No

sj

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