



W.P.(MD) No.17352 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.08.2023

CORAM:

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

W.P.(MD) No.17352 of 2021

P.Balamurugan

: Petitioner

-vs-

1.The District Collector,
Thoothukudi District,
Thoothukudi.

2.The Revenue Divisional Officer,
Kovilpatti,
Thoothukudi District.

3.The Tahsildar,
Kayathar, Thoothukudi.

4.The Block Development Officer,
Kayathar Panchayath Union,
Kayathar, Thoothukudi.

5.S.Ayyadurai

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 to 4 herein to remove the encroachment which is made by the fifth respondent herein in the path to the burial ground of the North Ilanthaikulam Village, Kayathar Taluk, Thoothukudi District by considering the petitioner's representation dated 08.03.2021 within a stipulated time as prescribed by this Court.

For Petitioner

: Mr.S.Saravanan



WEB COPY



W.P.(MD) No.17352 of 2021

For R1 to R4 : Mr.P.Thilakkumar
Government Pleader
For R5 : No Appearance

ORDER

[Order of the Court was made by S.S.SUNDAR, J.]

This Writ Petition is filed for issuance of a Writ of Mandamus directing the respondents 1 to 4 herein to remove the encroachment which is made by the fifth respondent herein in the path to the burial ground of the North Ilanthaikulam Village, Kayathar Taluk, Thoothukudi District by considering the petitioner's representation dated 08.03.2021.

2. The petitioner is a resident of North Ilanthaikulam Village which comes under the fourth respondent Panchayat Union. Stating that the fifth respondent has encroached a public road adjoining his house, the above writ petition is filed for removal of encroachment.

3. The third respondent has filed a counter affidavit indicating that the fifth respondent has put up a construction in S.No.335/4 in North Ilanthaikulam Village to an extent of 2060 sq.ft of Natham land. The third respondent also has indicated that no part of street is encroached by the fifth respondent by specifically denying the averment in the affidavit that the fifth respondent has encroached the pathway to prevent the petitioner



W.P.(MD) No.17352 of 2021

to have access to the burial ground. However, the encroachment according to the third respondent is in a property classified as Natham. Though the fifth respondent is represented by counsel, there is no representation for the fifth respondent.

4. From the contentions of the petitioner and the counter affidavit and the status report filed by the third respondent, this Court is unable to find whether the property is vested with Government or a communal property. When the classification of the land as admitted by the petitioner as well as the official respondents is Natham, this Court cannot treat the property as the property of Government unless it is shown that the said property was used for or reserved for communal purpose. Since this Court, in a Writ Petition under Article 226 of the Constitution of India, cannot decide the question of title, it is open to the petitioner to seek appropriate relief before the civil Court.

5. With liberty so preserved to the petitioner to approach the civil Court to seek appropriate relief, this Writ Petition is dismissed. No costs.

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

21.08.2023

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

<https://www.mhc.tn.gov.in/judis>



WEB COPY



W.P.(MD) No.17352 of 2021

S.S.SUNDAR, J.
and
D.BHARATHA CHAKRAVARTHY, J.

sjl

To

- 1.The District Collector,
Thoothukudi District,
Thoothukudi.
- 2.The Revenue Divisional Officer,
Kovilpatti,
Thoothukudi District.
- 3.The Tahsildar,
Kayathar, Thoothukudi.
- 4.The Block Development Officer,
Kayathar Panchayath Union,
Kayathar, Thoothukudi.

W.P.(MD) No.17352 of 2021

21.08.2023