



W.P.(MD)No.16760 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.07.2023

CORAM:

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

and

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

W.P.(MD)No.16760 of 2023

and

W.M.P(MD)No.13987 of 2023

S.Gajendran

... Petitioner

Vs.

1.The District Collector,
Pudukottai.

2.The Revenue Divisional Officer,
Pudukottai,
Pudukottai District.

3.The Thasildar,
Pudukottai,
Pudukottai District.

4.Saravanan

5.Ravi

.. Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order of the second respondent in her proceedings bearing Na.Ka.No.A1/6253/2022 dated 30.06.2023 and quash the same with a consequential direction, directing the second respondent to remove the



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encroachments in “Nilaviyal Pathway” situated in S.Nos.58/6A/58/2, 59/1D & 60/2, M.Kulavaaipatti, Perungondanviduthi Village, Pudukkottai and enable the petitioners to use “Nilaviyal Pathway”, to approach their agricultural field.

For Petitioner :Mrs.K.Porkodi Karnan
For R-1 to R-3 :Mr.J.K.Jeyaseelan,
Government Advocate

ORDER

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

Heard Mrs.K.Porkodi Karnan, learned counsel for the petitioner and Mr.J.K.Jeyaseelan, learned Government Advocate for respondents 1 to 3.

2. The petitioner has filed this writ petition challenging the order of the second respondent in Na.Ka.No.A1/6253/2022, dated 30.06.2023 and to direct the second respondent to remove the encroachments in “Nilaviyal Pathway” situated in S.Nos.58/6A/58/2, 59/1D & 60/2, M.Kulavaaipatti, Perungondanviduthi Village, Pudukkottai and enable the petitioner to use the “Nilaviyal Pathway”, to approach his agricultural field.

3. The case of the petitioner is that he is the owner of the land in Survey No.60/2B at M.Kulavaipatti Village, Pudukkottai Taluk. It is his further case that patta for the said land stands in his name and he is entitled to have



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access through the Cart Track lying in Survey No.58/6A, 58/2, 59/1D & 60/2A.

Stating that the said Cart Track is also shown as “Nilaviyal Pathai” in the revenue records, the petitioner has come forward with the above writ petition.

4. This Court is of the view that the “Nilaviyal Pathai” which is shown in F.M.B., cannot be demarcated without reference to boundaries and measurement on ground. Therefore, it is for the petitioner to establish his right to have access through a defined passage/cart track. Since a claim for easement is always a right attached to a land and the petitioner has to prove such right with certainty, it will be more appropriate for the civil Court to find whether the “pathai” is available on ground and how it exists on ground. In that view of the matter, this Court is unable to entertain this writ petition. Therefore, this writ petition is dismissed, however, with a liberty to the petitioner to approach the civil for appropriate relief. No Costs. Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.] [D.B.C., J.]
12.07.2023

Index : Yes / No
NCC : Yes/No

pm



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To

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