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W.P.(MD) No.18035 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.07.2023

CORAM:

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

W.P.(MD) No.18035 of 2023

Karu.Chinnakannu

... Petitioner

-vs-

1.The District Collector
Pudukkottai District
Pudukkottai

2.The Tahsildar
Thirumayam Taluk
Pudukkottai District

3.Karuppaiah

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of mandamus directing the second respondent to remove the encroachment caused by the third respondent in the public pathway in Survey Nos.456/1, 456/22 and 29/34, situated at Therkkku Thalampatti Village, Thirumayam Taluk, Pudukkottai District and further direction to pass



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appropriate orders as per revenue standing orders 26(15) in respect of Survey Nos.29/34 & 456/22 by considering the representation dated 20.12.2022.

For Petitioner : Mr.M.Ramu

For Respondents : Mr.P.Thilakkumar
Government Pleader for R1 & R2

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 second respondent to remove the encroachment made by the third respondent in the public pathway in Survey Nos.456/1, 456/22 and 29/34 of Therkku Thalampatti Village, Thirumayam Taluk, Pudukkottai District with a further direction to pass appropriate orders as per the revenue standing order 26(15) in respect of Survey Nos.29/34 and 456/22, based on the petitioner's representation dated 20.12.2022.

2. The petitioner is a resident of Therkku Thalampatti Village. It is the case of the petitioner that there is a pathway in Survey Nos.456/1, 456/22 and 29/34, which is adjacent to a School. Stating that the third



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respondent has encroached the said pathway, the petitioner gave a representation, on 11.10.2021, to the second respondent. It appears that the second respondent had replied to the petitioner stating that lands in Survey Nos.456/22 and 29/34 have been assigned to 23 persons *vide* Patta No.1132. The case of the petitioner is that the third respondent, who is not having any assignment in respect of any of these survey fields, has made encroachment in the pathway. On the basis of these factual averments, the petitioner has approached this Court for removal of encroachment made in the public pathway, particularly, in Survey Nos.456/1, 456/22 and 29/34.

3. This Court finds that the lands in these survey fields are in the holding of private individuals. Even though the land in Survey No.456/1 was earlier classified as “Ryotwari Punja”, the revenue records produced before this Court by the petitioner shows that the said classification is subsequently changed as “Public Pathway”. It is not the case of the petitioner that the entire extent of land in Survey No.456/1 is used as a pathway. From the records, it is seen that a joint Patta has been given in favour of several individuals, *vide* Patta No.1132. The petitioner himself admits that the Tahsildar, Thirumayam Taluk, has earlier replied to him to the effect that



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necessary steps will be taken in accordance with law for removal of encroachments, once Patta No.1132, which stands in the name of several individuals, is cancelled. Therefore, the petitioner is now praying for cancellation of Patta and removal of encroachments. This cannot be permitted in a writ petition under Article 226 of the Constitution of India. This Court cannot permit summary proceedings being initiated, when issues relating to question of title are involved. In that view of the matter, this Court finds no merit in this writ petition. However, it is open to the petitioner to approach the Civil Court and establish his right of way or right of easement, if really any pathway is in existence over the private land in the above mentioned survey numbers.

4. With the liberty so preserved to the petitioner to approach the Civil Court, this writ petition is dismissed. No costs.

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

[D.B.C., J.]

26.07.2023

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

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Thirumayam Taluk,
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