



W.P(MD)No.20327 of 2021

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH
COURT**

DATED : 07.12.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P(MD)No.20327 of 2021
and
W.M.P(MD)No.16980 of 2021

Rajangam

... Petitioner

Vs.

1.The District Collector
Madurai.

2.The Block Development Officer
Vadipatti Panchayat Union,
Vadipatti Taluk,
Madurai District.

3.The President
Kadupatti Panchayath Union,
Madurai District.

...Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus directing the respondents 1, 2 to restrain the third respondent from laying road in the property comprised in S.No.88/1B to an extent of 1.29 acres situated at Mannadimangalam Village, Vadipatti Taluk, Madurai District on the basis of the petitioner's representation, dated 20.10.2021.

For Petitioner : Mr.R.G.Shankar Ganesh

For Respondents : Mr.R.Baskaran,

Additional Advocate General

assisted by Mr.R.Ragavendran – for R1

Government Advocate

Mr.S.Kameswaran – for R2

Government Advocate

ORDER

This Writ Petition was filed for the issue of a Writ of Mandamus forbearing the third respondent from laying a road in property comprised in Survey No.88/1B to an extent of 1.29 acres situated at Mannadimangalam Village, Vadipatti Taluk, Madurai District.



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2. When the matter came up for hearing on 15.11.2023, this Court passed the following order:

“This Writ Petition has been filed for the issue of writ of mandamus directing respondent Nos.1 and 2 to restrain the third respondent from laying a road in the subject property in which the petitioner claims to be a cultivating tenant.

2. The specific case of the petitioner is that there is already an alternative pathway available to access the graveyard and in spite of the same, the third respondent was attempting to lay a road in the subject property. When a similar attempt was made on an earlier occasion, the petitioner had filed a suit in O.S.No.103 of 1997 and an interim injunction was also granted. Based on the same, work was stopped. Once again, the third respondent had attempted to lay a pathway in the subject property in the year 2021.

3. The second respondent has filed a counter affidavit and has taken the following stand at Paragraph No.9 of the counter:

“9. I submit that the public pathway is used by the villagers of the



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Mannadimangalam Village, Vadipatti Taluk, Madurai District for the past 70 years. Further the said pathway is the only path to reach the graveyard and the villagers were used the said pathway to transport their cultivating crops, harvested raw material and other things. In such circumstance while laying the road in the said Public Pathway, the Petitioner caused disturbance and restraining to lay road. The petitioner is not owner of the said property and he is only a cultivating tenant. The petitioner is only cultivating the said property. The actual owner of the property is not objecting the said pathway. Hence the Petitioner is not having any rights to claim or restrain the Respondents from laying road and the villagers had requested to lay the road which connect the graveyard and in the rainy season the said roads were not able to use and fills with water.”

4. The learned counsel for the petitioner submits that the owner of the property has not given any no objection to the third respondent to lay a road



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and that apart, there is an alternative road available to access the grave yard.

5. The learned Government Advocate seeks for some time to take instructions in this case and to report before this Court.

6. Post this case under the caption for orders on 22.11.2023.”

3. The matter was thereafter, taken up for hearing on 22.11.2023 and this Court passed the following order:

“Pursuant to the earlier order dated 15.11.2023, this matter is listed today for hearing.

2.Mr.N.Senthilkumar, Junior Assistant, Vadipatti Block Development Office was present and on the instructions given by him, the learned Additional Government Pleader submitted that the road has already been laid six months back.

3.This Court specifically directed the respondents to keep the decision to lay the road in abeyance, as early as on 19.11.2021. In spite of the same, it is submitted that the road has been laid six months back. If that is so, there is violation of interim order passed by this Court.



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4.The second respondent is directed to file an affidavit in this case explaining as to how the road was laid when this Court has already passed an interim order to keep the decision in abeyance.

5.List this case on 29.11.2023 under the same caption.”

4. The matter was once again listed for hearing on 29.11.2023 and this Court passed the following order:

“Pursuant to the earlier order of this Court, dated 22.11.2023,the matter was posted for hearing today.

2.The second respondent has filed an affidavit and the relevant portion is extracted hereunder:

“9.I submit that the public pathway is used by the villagers of the Mannadimangalam Village, Vadipatti Taluk, Madurai District for the past 70 years. Further the said pathway is the only path to reach the graveyard and the villagers were used the said pathway to transport their cultivating crops, harvested raw material and other things. In such circumstance while laying



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the road in the said Public Pathway, the Petitioner caused disturbance and restraining to lay road. The petitioner is not owner of the said property and he is only a cultivating tenant. The petitioner is only cultivating the said property. The actual owner of the property is not objecting the said pathway. Hence the Petitioner is not having any rights to claim or restrain the Respondents from laying road and the villagers had requested to lay the road which connect the graveyard and in the rainy season the said roads were not able to use and fills with water.”

3.The learned Additional Advocate General appearing on behalf of the respondents submitted that the road was laid as early as in the year 2020-21 and to substantiate the same, the learned Additional Advocate General brought to the notice of this Court the resolution that was passed by the Panchayat and the proceedings of District Collector and also the final bill that was disbursed to the Contractor for completing the work. The learned Additional Advocate General submitted that the road



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has been laid long back and the attempt made by the petitioner to project as if, the road has been laid recently is not correct.

4.The learned counsel for the petitioner seeks for some time to take instructions.

5.Post this case under the caption 'Part Heard Cases' on 07.12.2023 at 2.15pm."

5. Heard the learned counsel on either side and perused the materials available on record.

6. In the case in hand, the petitioner has taken a stand that he is a cultivating tenant and that the road was laid in the agricultural land and as a result, the petitioner has sought for a direction against the respondents to restrain them from utilizing the property as a road. The further case of the petitioner is that the road was laid inspite of an interim order passed by this Court.

7. Per contra, the case of the respondents is that the road



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was laid long back and permission was given by the owner of the property and the attempt made by the petitioner to project as if, the road was laid recently is not correct.

8. In the considered view of this Court, the nature of grievance that is agitated in the present case involves disputed question of facts. The same cannot be dealt with in a Writ Petition, since it requires appreciation of evidence. Therefore, liberty is granted to the petitioner to work out his remedy before the competent civil Court and seek for appropriate relief. Except giving this liberty, no further orders can be passed in this Writ Petition.

9. This Writ Petition is disposed of in the above terms.
No costs. Consequently, connected miscellaneous petition is closed.

07.12.2023

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



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To

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N.ANAND VENKATESH, J.

RM

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