



W.P.(MD)No.8880 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :17.03.2023

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.(MD)No.8880 of 2016

V.Selvaraj

... Petitioner

Vs.

1.The District Collector,
District Collector Office,
Sivagangai District,
Sivagnagai.

2.The Block Development Officer,
(Village Panchayat)
S.Pudur Panchayat Union,
S.Pudur Post,
Thirupatur Taluk,
Sivagangai District.

3.The Assistant Engineer,
S.Pudur,
Thirupathur Taluk,
Sivagangai District.

4.The President,
Dharmapatti Kondapalayam Panchayat,
S.Pudur Panchayat Union,
Thirupathur Taluk,
Sivagangai District.

... Respondents



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PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records pertaining to the order made in Na.Ka.No.A2/2093/2015 dated 23.10.2015 passed by the second respondent and quash the same consequently direct the respondent to permit the petitioner to put up a pathway by set righting the unrefined elevated portion on the west side of the channel situated at S.No.275 Dharmapatti Village, Thirupathur Taluk, Sivagangai District to have access to the petitioner's property situated at S.No.280/2 Dharmapatti Village, Thirupathur Taluk, Sivagangai District.

For Petitioner :Mr.P.R.Pirithiviraj

For Respondent :Mr.C.Baskaran,
Government Advocate for R1 to R3

:No appearance for R4

ORDER

The petitioner assails an order of the second respondent dated 23.10.2015 by which his request to build a pathway on the west side of the channel at Survey No.275 Dharmapatti Village, Thirupathur Taluk, Sivagangai District, was rejected.



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2. The petitioner asserts that he is the absolute owner of the property in S.No.280/2 at the above mentioned village. He further states that a channel runs through Survey No.275, which is close to his house. The petitioner further asserts that the bund on the western side of the kanmai is the only access to his house and that, therefore, he is entitled to easement rights in respect thereof.

3. The petitioner further submits that he submitted a representation dated 30.07.2013 requesting the first and second respondents to permit him to build a mud pathway without affecting the channel at his own cost. Without providing a hearing to the petitioner, it is submitted that the request was rejected entirely on the basis of reports received from the third and fourth respondents. Learned counsel for the petitioner states that the impugned order is unsustainable because the petitioner was not provided a reasonable opportunity. He further submits that the second respondent misconstrued the request of the petitioner and erroneously concluded that the petitioner wanted a tar road to be built at the cost of the respondent.



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4. Learned Government Advocate refers to the impugned order and points out that the petitioner requested for permission to build a road adjoining a water body. Therefore, the request was liable to be and was rightly rejected.

5. The admitted position is that the petitioner was not provided a hearing before the impugned communication was issued. In the representation dated 30.07.2013, the petitioner has stated expressly that this is the only path/access to his house. He has further stated that he would build a mud pathway at his own cost. In these facts and circumstances, the impugned order is liable to be quashed so as to enable the provision of a reasonable opportunity to the petitioner.

6. While reconsidering the petitioner's request, the second respondent should examine whether this is the only access to the petitioner's house and, more importantly, whether the construction of a mud pathway would impede or obstruct the channel in any manner.



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7. For reasons set out above, the impugned order is quashed and the second respondent is directed to reconsider the matter after providing a reasonable opportunity to the petitioner and by also taking into account the observations contained in this order. This exercise shall be concluded within a period of four months from the date of receipt of a copy of this order. Any materials proposed to be relied upon by the second respondent in taking a decision shall be provided to the petitioner.

8. Accordingly, W.P.(MD).No.8880 of 2016 is disposed of without any order as to costs.

17.03.2023

NCC :Yes/No
Internet :Yes/No
Index :Yes/No
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SENTHILKUMAR RAMAMOORTHY, J.

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