



WEB COPY



W.A.No.2432 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2024

CORAM :

THE HON'BLE MR. D.KRISHNAKUMAR, ACTING CHIEF JUSTICE

and

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.A.No.2432 of 2024 and

CMP No.17227 of 2024

K.Velumani

... Appellant

Vs.

1. The District Collector, Erode District,
Office of the District Collector,
Perundurai Road, Erode.

2. Revenue Divisional Officer, Erode Revenue Division,
Brough Road, Erode.

3. The Tahsildar, Office of the Tahsildar,
Erode Taluk, Cuchery Road, Erode.

... Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letter Patent to set aside the order dated 13.06.2024 made in W.P.No.20819 of 2023.

For Appellant : Mr.K.Sharath Chandran

For Respondents : Mr. A.Edwin Prabakar,

State Government Pleader,

Assisted by Mr.M.Habeeb Rahman



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JUDGMENT

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This intra court appeal has been filed to set aside the order passed by the learned Single Judge dated 13.06.2024 made in W.P.No.20819 of 2023.

2. The appellant/writ petitioner has filed the above said writ petition to forbear the respondents from obstructing access to the petitioner's property through R.S.No.14/3, Thindal Oor Village, Erode Taluk, Erode District (Vandipathai/ cart tract). The appellant has sought the said prayer, claiming that he is the owner of the property in Survey No.14/4 and 14/5A and the respondents are proposed to fence the cart tract to protect the government property, as the petitioner has encroached the said Vandipathai and effecting cultivation.

3. In the said writ petition, the third respondent has filed a detailed counter affidavit explaining the location and classification of the lands of the petitioner in S.No.14/4 and 14/5A as well as the lands in dispute in S.No.14/3, which is earmarked as Vandipathai. It is contented in the



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counter affidavit that, in order to prevent the encroachment and also to protect the government land, the government has taken steps to erect fencing surrounding the Vandipathai.

4. Subsequently, the respondents have come up with the proposal that the petitioner will be given 23 feet of land in S.No.14/3, for the purpose of his entry to his land in S.No.14/4 and 14/5A and the fencing would be commensurate with this revised proposal.

5. However, the learned counsel for the appellant/writ petitioner submitted before the learned Single Judge that the writ petitioner is not satisfied with the above proposal and he wants the entirety of the frontage of his property to be left open.

6. As the learned Single Judge did not find any merit in the above submission made by the counsel for the petitioner and also since the said proposal of the respondents found to be legitimate, has ordered to fence Vandipathai, leaving 23 feet as open for ingress and egress of the



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petitioner's property through the Vandipathai. Assailing the above order, the appellant/writ petitioner has filed the present writ appeal.

7. The learned counsel for the appellant submitted that, the southern boundary of the appellant's land, measuring 110 feet, adjoins the cart tract and he is entitled to access to the cart tract from any point along the 110 feet, whereas, the learned Single Judge has ordered only 23 feet of the 110 feet to be left open for access by the appellant and the rest to be fenced, which is against the law.

8. The learned Special Government Pleader submitted that the land in question in S.No.14/3 is a Government Poramboke-Vandipathai and it is much valuable land. Therefore, in order to protect the government land, necessary proposals have been sent by the Tahsildar, Erode to the District Collector, Erode to erect the barbed wire fencing surrounding the above lands and the same was also ordered. However, since the appellant/writ petitioner has raised objection by filing the writ petition, considering his grievance, a proposal was submitted by the respondent and since it was a



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legitimate one and no hindrance or hardship would be caused to the appellant, while executing the said proposal, the learned Judge has ordered as supra. Therefore, the writ appeal is liable to be dismissed.

9. Heard the learned counsel for the appellant as well as the learned State Government Pleader and we have perused the materials on record.

10. According to the petitioner, he is the owner of the lands in S.No.14/4 and 14/5 and adjoining to his lands, there is a land in S.No.14/3, which is kept vacant, as it is classified as cart tract. The contention of the appellant is that, he is having access to his property only through the said cart tract in S.No.14/3, which is adjacent to his property on southern side and if it is fenced, his right to enjoy his property would be deprived. Further it is contended by him that his total southern boundary is measuring to an extent of 110 sq.ft. and hence, grant of only 23 feet to be kept open, is against the law and he is entitled to access to the cart tract from any point along the 110 feet.



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11. The action taken by the respondent to fence the government land, in order to prevent the encroachment, cannot said to be illegal. However, the appellant is having access only through the said Cart tract in S.No.14/3 to enter his property on the southern side. The learned Judge has considered the fact that on the north, the petitioner's property is bound by the lower Bavani Project Canal and to the west and east, there are private properties and hence, the ingress to the petitioner's property is primarily through the frontage, abutting the Vandipathai at southern side. In such circumstances, the respondents have agreed to left open 23 feet on the perimeter of the Vandipathai for ingress and egress of the petitioner's property. However, without accepting the same, the appellant contended that he has right to access the public road from every point of his property at his southern side, which is, in our view, has no merits and it cannot be granted. Therefore, we find no error in the order passed by the learned Single Judge.

12. Still, the learned counsel for the appellant submitted that the appellant is having every legal right to enjoy the Vandipathai in entirety from his frontage and the same cannot be deprived by erecting fencing.



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Therefore, we are of the view that, if the appellant is having any legal right in the vandipathai, which is subject matter of the property, he can approach the civil court seeking remedy.

13. With the above liberty, this writ appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(D.K.K., A.CJ.) (P.B.B.J.)

Internet: Yes/No
Index : Yes/No
mst

13.08.2024

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