



W.A(MD)No.97 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.02.2024

CORAM:

**THE HONOURABLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE
and
THE HONOURABLE MR.JUSTICE P.DHANABAL**

**W.A(MD)No.97 of 2024
and
CMP(MD)Nos.903 and 904 of 2024**

N.K.Shamugasundaram

... Appellant

-vs-

1. The District Collector,
Madurai District,
Madurai.

2. The Block Development Officer (Village Panchayat),
Office of the West Panchayat Union,
Madurai-625 002.

3. The Tashildar,
Madurai North Taluk,
Madurai.

4. The President,
Chettikulam Panchayat,
Chettikulam, Oomatchikulam Village,
Madurai.

... Respondents

PRAYER: Appeal filed under Clause 15 of Letters patent, against the order dated 11.12.2023 made in W.P(MD)No.11812 of 2021 on the file of this Court.



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For Appellant : Mr.K.R.Laxman
For R1 to R3 : Mr.Veera Kathiravan
Additional Advocate General assisted by
Mr.N.Satheesh Kumar
Additional Government Pleader

J U D G M E N T

[Judgment of the Court was made by The Hon'ble CHIEF JUSTICE]

We have heard Mr.K.R.Laxman, learned counsel appearing for the appellant and Mr.Veera Kathiravan, learned Additional Advocate General assisted by Mr.N.Satheesh Kumar, learned Additional Government Pleader appearing for the respondents 1 to 3.

2. The appellant had filed a writ petition seeking a direction restraining the construction of a compound wall for the burial ground located at Survey No.124/4. The learned Single Judge dismissed the writ petition. Aggrieved thereby, the present appeal is filed.

3. It is stated that the review petition filed is also dismissed.



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4. Learned counsel for the appellant strenuously contends that a pathway existed for going to the agricultural field of the appellant. By constructing the compound wall, that pathway has been included in the burial ground area thereby blocking the pathway/road. Because of blocking the pathway, the agricultural equipments and the Tractor cannot be taken to the agricultural field. The other alternate land suggested by the respondents is not feasible and viable for the reason that there are residential houses constructed therein and their own vehicles are parked on the road. The respondents cannot be allowed to block the pathway. Though in the revenue record, the pathway in question is not shown as pathway, still it would come within the ambit and purview of the definition 'public road' as defined under Section 2(2) of the Tamil Nadu Panchayats Act, 1994. The learned counsel relies on the Map produced along with the petition.

5. Learned Additional Advocate General appearing for the respondents 1 to 3 submits that there is no public pathway. It is to safeguard the burial ground and the Gasifier, the compound wall is constructed. On the last occasion, this Court had directed survey to be conducted in the presence of the appellant. Accordingly, survey was conducted and the appellant was



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also present and he was shown that alternate road is available and the Government Tractor as well as the appellant's Tractor can be taken to his agricultural field without any obstruction.

6. We have considered the submissions.

7. It appears that the appellant has alternate pathway to proceed to his agricultural field. As far as the pathway as alleged by the appellant is concerned, the record nowhere discloses the existence of the said pathway. The compound wall is constructed around the Crematorium since a Gasifier is made operational in the area. Unless as per the record, it is shown that the public road exists, the appellant cannot claim a vested right to use the same.

8. In case the appellant seeks the pathway in question as an easementary right, then the appellant has to seek declaration from the Civil Court in that regard. It is for the appellant to take steps as may be permissible under law. In the light of that, no case is made out for interference.



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WEB COPY 9. The Writ Appeal stands disposed of accordingly. No costs.

Consequently, connected miscellaneous petitions are closed.

[S.V.G., C.J.]

[P.D.B., J.]

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Index : Yes / No
Neutral Citation : Yes / No
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