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W.P.(MD) No.925 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD)No.925 of 2024

and

W.M.P.(MD)No.948 of 2024

K.Mumathu

... Petitioner

-Vs-

- 1.The Director,
The Directorate of Municipal Administration,
Urban Administrative Building, R.A.Puram, Chennai.
- 2.The District Collector,
Tenkasi District, Tekasi.
- 3.The Tahsildar,
Kadayanallur Taluk,
Tenkasi District.
- 4.The Commissioner,
Puliyangudi Municipality,
Tenkasi District.

5.Suma

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 2 to 4 to restore the Public Pathway running under S.No.237, 338, 249/279P, 351/1, 351/2, 263/1 and 263/2



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of Puliyangudi Village, Kadayanalur Taluk, Tenkasi District leading to the property of the petitioner, by removing the obstruction in the form of a fence and to survey the entire survey fields falling under S.No. 237, 338, 249/279P, 351/1, 351/2, 263/1 and 263/2 of Puliyangudi Village, Kadayanalur Taluk, Tenkasi District before identifying the actual encroachment.

For Petitioner : Mr.J.Barathan

For R1 to R4 : Mr.S.P.Maharajan
Special Government Pleader

ORDER

[Order of the Court was made by D.KRISHNAKUMAR, J.]

This writ petition has been filed seeking removal of encroachment in the form of fence put up by the respondents alleging that the subject property in Survey No.16/1 is classified as burial ground.

2.According to the learned counsel for the petitioner, the property in Survey No.355/4B was purchased by the petitioner in the year 2016 through a registered sale deed dated 2016. From the date of purchase, he was running a brick kiln industry in the said property. He is using the common pathway situated in Survey No.16/2 to reach his property. He would further submit that the neighbouring occupants have encroached upon the government lands with



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the collusion of the fifth respondent. The fourth respondent in order to protect the actual encroachers, had fenced the common pathway and a portion of the petitioner's land without issuing any notice as if the said lands are belonged to the government.

3.He further submits that the petitioner had filed another writ petition against the fourth respondent. When the said writ petition is pending, the fourth respondent without any notice and without providing any opportunity of hearing to the petitioner, put up the fence in the common pathway. The said common pathway is the only pathway leading to ingress and egress the petitioner's residence and brick kiln industry. Hence, the petitioner is constrained to file the present writ petition to remove the obstruction in the way leading to the property of the petitioner.

4.The learned Special Government Pleader appearing on behalf of the official respondents submits that the third respondent has filed a status report stating that the petitioner is claiming right over the land situated at New T.S.No. 16/2 to an extent of 2 acres and 60 cents, which is classified as 'Government Poromboke Burial ground' in the revenue records. The petitioner and one Esakkirajan have encroached upon the same by putting up the sand used for



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their brick kiln works. When this came to the knowledge of the fourth respondent, notice was issued to the petitioner stating that crematorium is going to be constructed in the subject lands and directing them to remove the encroachments. Challenging the same, the petitioner has filed writ petition and the same is pending.

5.It is further stated in the status report that the encroachments with regard to other survey numbers in S.No.237, 249, 351/1, 263/1 and 263/2 as alleged by the petitioner is concerned, since the said properties are under the jurisdiction of Animal Husbandry Department and Public Works Department, respectively, the said departments have to remove the encroachments, if any, in the said lands. The respondents herein are not competent to remove such encroachments in the said survey numbers. Hence, the allegation made against the official respondents by the petitioner that they are protecting the actual encroachers is not at all true.

6.He further submitted that the daughter of the petitioner is the Chairman of the Puliyanakudi Municipality and his son is the erstwhile Commissioner of the fourth respondent Municipality. At the time of purchasing the land, the petitioner did not have any pathway to his property. By misusing



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the powers of the petitioner's son and daughter, the petitioner had managed to encroach upon the government land and use it as a pathway by putting up a road in the burial ground. The revenue records does not show that there is a pathway in the burial ground. Hence, the respondents, based on the directions of the officials, had fenced the government lands in order to safe guard the same and also to enable the Municipality to form a crematorium.

7.We have considered the submissions made on either side and also perused the materials placed on record.

8.Admittedly, the revenue records shows that the land in Survey No. 16/2 is the burial ground. The petitioner traces his title through his registered sale deed dated 24.08.2016. The revenue records do not show that there is a pathway in the burial ground to reach the petitioner's property. Further, there are no details available about the encroachers, those who have have encroached upon the property in question.

9.Considering the facts and circumstances of the case, this Court is of the view that there are disputed facts involved in this case and such disputed facts cannot be adjudicated under Article 226 of the Constitution of India. The



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proper remedy for the petitioner is to approach the competent civil court seeking appropriate relief.

10.For the reasons stated above, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[D.K.K., J.] & [R.V., J.]
30.01.2024

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