



W.P.(MD) No.1759 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.02.2024

CORAM:

**THE HONOURABLE MR.SANJAY V.GANGAPURWALA, CHIEF
JUSTICE**

and

THE HONOURABLE MR.JUSTICE G.ILANGO VAN

W.P.(MD) No.1759 of 2024

Ezhumalai

... Petitioner

-VS-

1. The District Collector,
Karur District, Karur.
- 2.The Revenue Divisional Officer,
Kulithalai, Karur District.
- 3.The Tahsildar,
Krishnarayapuram Taluk, Karur District.
4. The Block Development Officer,
Krishnarayapuram Panchayat Union,
Krishnarayapuram, Karur District.



W.P.(MD) No.1759 of 2024

WEB COPY 5. Kodangi

6. Rajalingam

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondents 1 to 3 to remove the encroachment made by the respondents 5 and 6 in public road in S.No.658/11 of Shivayam Vilage Group, Krishnarayapuram Taluk, Karur District and to further direct the fourth respondent to complete the road work in the said land.

For Petitioner : Mr.V.Kannan

For Respondents : Mr.P.Thilak Kumar
Government Pleader for R1 to R3

Mr.M.Jerin Mathew – Advocate Commissioner

ORDER

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

We have heard Mr.V.Kannan, learned counsel for the petitioner and Mr.P.Thilak Kumar, learned State Government Pleader, for respondents 1 to 3.



W.P.(MD) No.1759 of 2024

WEB COPY

2. This Court had appointed an Advocate Commissioner in view of the fact that according to the petitioner there is an encroachment on the road whereas, according to the learned Government Pleader, there is no encroachment.

3. The Advocate Commissioner submitted the report. The findings are as under:-

“The petitioner alleges that encroachment had been made in the above said Survey No. 658/11 by one Mr. Kodangi/ 5th respondent and Mr. Rajalingam/ 6th respondent. The 5th respondent and 6th respondent had constructed a pakka house. In the Adangal produced by the 3rd respondent the 5th respondent is having 00.200 ares of land and the 6th respondent is having 00.300 ares of land. In the Chitta the 5th respondent is having 0.250 ares of land and the 6th respondent is having 00.30 ares of land. Hence the construction made by the 5th and 6th respondent cannot be termed as encroachment in its entirety as they had constructed their respective house in patta land.

The measurement had been made at the opening and the end portion of the "Nilavial Pathai" and at the both end it measures more than 9.20 meters. The measurement taken from the one end of the road and the other end towards the house of the 5th respondent



W.P.(MD) No.1759 of 2024

WEB COPY

measured to an extent of 9 meters and that of the 6th respondent measured to an extent of 8.20 meters.

The 4th respondent had produced the estimate and specification report for laying the road. In the said report it had been mentioned that the area of laying the road is only 3.75 meters and hence there is sufficient space to lay the road. Further it had been asserted by the 4th respondent earlier road was available in the same place and at present they only going to strengthening the said road and as such they were not in the process of laying the new road.

The Surveyor had informed that the patta had been issued to the 5th and 6th respondent and as such the land should be earmarked to the individual at first and the remaining portion alone could be the "Nilavial Pathai". I was informed that earlier the entire survey number was patta land and the road was earmarked from the patta land. It was also informed that there may survey error to some extent. The surveyor had also informed that the Nilaviyal Pathai is not having the same width at all the places and the same is uneven.

Confining to the scope of my warrant from my inspection there may not be any encroachment in Survey No. 658/11 and more particularly the encroachment could be identified accurately only by surveying the house constructed by the 5th and 6th respondent in its entirety as they were patta land."



W.P.(MD) No.1759 of 2024

WEB COPY

4. In view of the report of the Advocate Commissioner, no further orders are necessary in the present writ petition. The writ petition, accordingly, stands disposed of. There shall be no order as to costs.

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

[G.I., J.]

26.02.2024

Index : Yes / No
Neutral Citation : Yes / No
PKN

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W.P.(MD) No.1759 of 2024

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