



W.P.(MD)No.21363 of 2023

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 28.11.2024

CORAM:

**THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN**

**W.P.(MD)No.21363 of 2023**

Kammavar Samuga Nala Sangam  
represented by its Secretary,  
N.Mahalakshmi

...Petitioner

-Vs-

1.The District Collector,  
Office of the Collector,  
Virudhunagar District.

2.The Revenue Divisional Officer,  
Office of the Revenue Divisional Officer,  
Sattur,  
Virudhunagar District.

3.The Tahsildar,  
Vembakottai Taluk,  
Virudhunagar District.

4.Jeyapaul

...Respondents

**Prayer :** Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondents 1 and 2 to permit the petitioner to fence the property in Virudhunagar District, Sattur Sub-District, Vembakkottai Taluk, Panaiyadipatti Village, Old Survey No.1000/2 New Survey No.1000/2A to an extent of 4,320 square feet by considering the representation of the petitioner dated 06.07.2023 within a time frame as may be fixed by this High Court.



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For Petitioner : M/s.P.Jessi Jeeva Priya  
For Respondents : Mr.S.Shanmugavel  
Additional Government Pleader  
for RR1 to 3  
Mr.R.Devaraj for R4

### **ORDER**

This writ petition has been filed for a direction, directing the respondents 1 and 2 to permit the petitioner to fence the property comprised in Old S.No.1000/2, New S.No.1000/2A to an extent of 4320 sq.ft. situated at Panaiyadipatti Village, Vembakkottai Taluk, Virudhunagar District.

2.The property originally belongs to an extent of 9.88 cents to one Venkatasamy. But in turn, he sold out the said property by the registered sale deed dated 28.09.1983 in favour of “Sanjay Gandhi Kammavar Youth Sangam” vide document No.37/81. While being so, one Gurusamy Naickar who was being the President of that Sangam has put up fence in and around the property. Since, some of the villagers have encroached the subject property by using their pathway to reach the Vembakkottai to Sathur Road.

3.The fourth respondent has owned the property comprised in S.No. 1000/2B to an extent of 3880 sq.ft by the registered sale deed dated 11.11.2005 which is situated on the southern side of the petitioner's property. Thereafter,



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the fourth respondent and his wife had settled the said property in favour of his son, vide settlement dated 23.04.2018 vide document No.1616 of 2018. Even as per the sale deed of the fourth respondent, there is no mentioning of pathway on the northern side of the fourth respondent's property. While being so, on the execution of the fourth respondent, the villagers have objected to fence the property of the petitioner. Thereafter, the above said Sangam has also settled the property in favour of the petitioner by gift deed dated 09.06.2023 vide document No.51 of 2023. Since the earlier Sangam was removed as per Section 44(4) of the Tamil Nadu Societies Registration Act.

4.In the meanwhile, the fourth respondent has filed a suit along with others in O.S.No.122 of 2022 on the file of the District Munsif Court, Sivakasi seeking permanent injunction in respect of the pathway through the petitioner's land. While pending suit, the third respondent submitted a report before the second respondent and accordingly, ordered to maintain status quo not to block the pathway which is in the petitioner's patta land.

5.The learned Counsel appearing for the fourth respondent submits that originally the subject property was purchased by one Sangam. Subsequently, it was declared as defunct and in order to grab the property, the said Sangam has



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executed the gift deed in favour of the petitioner. Even before the settlement deed, the fourth respondent and others have filed a suit for permanent injunction to use the pathway. The said pathway is used by the general public for several years. The petitioner has also filed a writ petition restraining from conducting any funeral procession before this Court in W.P.(MD)No.24623 of 2023 and the same was dismissed by an order dated 06.11.2024 with cost of Rs.25,000/-. Except the said pathway, no other pathway is there to reach the main road and as such, the fourth respondent and others have objected to fence in the petitioner's property.

6.The third respondent has filed counter and submission made by the learned Additional Government Pleader reveals that though the subject property belongs to the petitioner, there is a pathway used by the general public for the past several years. That apart, the fourth respondent has already filed a suit in O.S.No.122 of 2022 on the file of the District Munsif Court, Sivakasi and it is pending for adjudication seeking permanent injunction in respect of the pathway situated in the petitioner's land.

7.The intention of the petitioner is that restraining the villagers from using the pathway, which is situated in the petitioner's land. That apart, the



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petitioner's writ petition was dismissed by this Court with costs in W.P.(MD)No.24623 of 2024. Therefore, the permission cannot be accorded to the petitioner to fence his property. The third respondent has already submitted a report to the second respondent to maintain the status quo in respect of the pathway used by the general public. Further action will be taken subject to the result of the suit filed by the fourth respondent.

8.A perusal of the revenue records reveals that admittedly, the property comprised in survey No.1000/2 and re-survey No.1000/2A in Patta No.282 to an extent of 9.88 cents situated at Panayadipatti Village, Vembakottai Taluk, Virudhunagar District belongs to the petitioner. There is no evidence to show that there is a pathway or Nilaviyal Pathai or Vandi Pathai or cart track in the land comprised in survey No.1000/2A. However, according to the learned Counsel appearing for the fourth respondent, the villagers of Panayadipatti Village are using the pathway in between the petitioner's patta land to reach the Vembakottai to Sathur Road. Thus, it is clear that there is no revenue records to show that there is a pathway in the petitioner's patta land. While being so, no one can enter into patta land without permission or consent of the petitioner.



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9.A perusal of the order of the Hon'ble Division Bench in W.P.(MD)No. 24623 of 2023, dated 06.11.2024, the petitioner has sought for direction forbearing the private respondents not to conduct any funeral procession march in future through their residential streets, other than using a main road or usual route. The petitioner is being the private person cannot prevent the funeral procession in the public street. Therefore, the Hon'ble Division Bench has dismissed the writ petition with costs. However, it is nothing to do with the prayer sought for in this writ petition by the very same petitioner.

10.A perusal of the photographs produced by the petitioner as well as the fourth respondent, in the petitioner's patta land, the fourth respondent and every villagers are using the pathway to reach the main road. As per the rough sketch submitted by the petitioner reveals that there is adjacent public streets to reach the main road other than the petitioner's patta land. There is a Paver block street till the petitioner's patta land and thereafter, it turns on his left side to reach the main street and the said main street leads to Vembakottai to Sathur road. Instead of using the said street, the fourth respondent used the petitioner's Patta land to reach the Vembakottai to Sathur road. It is not permissible since the fourth respondent has no right to enter into the petitioner's land. That apart, even as per the fourth respondent's sale deed, there is no easement right to use the



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petitioner's patta land as pathway to reach the main road. The land owned by the fourth respondent was settled in favour of his son by the registered settlement deed dated 23.04.2018 vide document No.1616 of 2018, whose son is the Surveyor working under the third respondent office. Only with his influence, the third respondent has also succumbed to the case of the fourth respondent to use the patta land of the petitioner as pathway.

11.It is settled law that if any pathway or Nilaviyal Pathai or Vandi Pathai or cart track shows that in the revenue records of the subject property, even it is the patta land, the pattadhars cannot object for usage of the said pathway by the general public. Whereas in the case on hand, there is no evidence to show that there is a pathway in the petitioner's patta land as per the revenue records. Therefore, the fourth respondent or any villagers has no right to use the petitioner's patta land as pathway.

12.The proceedings of the third respondent dated 19.10.2022 reveals that the third respondent has rejected the request made by the villagers seeking cancellation of patta issued to one Gurusamy who is the President of erstwhile Sangam. The said request is nothing to do with the petitioner's patta land. Unfortunately, the second respondent has discussed about the petitioner's patta



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land and also the pathway used by the fourth respondent. It shows that the said observation was made only on the influence of the fourth respondent's son, who is working as Surveyor in the third respondent office. That apart, the suit filed by the fourth respondent and others in O.S.No.122 of 2022 on the file of the District Munsif Court, Sivakasi is only for bare injunction. Further, it is pending without any interim order. Therefore, mere pendency of the civil suit, it is not an impediment for the petitioner to put up fencing over its own patta land. In view of the objection raised by the second respondent as well as the 3<sup>rd</sup> respondent by the communication dated 19.10.2022, the impugned order cannot be sustained and is liable to be quashed. The petitioner cannot be restrained from putting, fencing his own property.

13. In view of the above, the petitioner is at liberty to fence his property on his own cost. It is also made clear that if any problem raised by the fourth respondent, the jurisdictional police is directed to take appropriate action as against the fourth respondent in accordance with law. Accordingly, this writ petition stands allowed. No costs.

**28.11.2024**

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



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**G.K.ILANTHIRAIYAN. J,**

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