



W.P(MD)No.28957 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.10.2024

CORAM :

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

W.P(MD)No.28957 of 2022

and

W.M.P.(MD)Nos.22934 & 22936 of 2022, 15788 of 2023 and 19613 of 2024

R.Vijayanarayanamoorthy

... Petitioner

vs.

1.The District Collector,
Collectorate Campus,
Madurai,
Madurai District.

2.The Revenue Divisional Officer,
O/o. the Revenue Divisional Office,
Madurai, Madurai District.

3.The Thasildhar,
O/o. the Thasildhar,
Madurai West Taluk,
Madurai,
Madurai District.

4.The Block Development Officer,
Tiruparankundram Panchayat Union,
Tirumangalam Main Road,
Tirunagar, Madurai,
Madurai District.

5.P.Pandiaraja
[R5 is impleaded vide order dated 24.10.2024,
made in W.M.P.(MD)No.19612 of 2024]

... Respondents



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Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the second respondent in his proceedings in Na.Ka.No.4614/2022/A, dated 15.12.2022, and quash the same as illegal and consequently, to forbear the respondents from laying a Metal Road (Thar Road) in the petitioner's own Patta land situated in Survey No.34/1B, Keezhmathikattinan Village, Madurai West Taluk, Madurai District, till the disposal of the pending Second Appeal in S.A.No.452 of 1998, on the file of this Court within the period that may be stipulated by this Court.

For Petitioner	: Mr.M.Ajmalkhan Senior Counsel for M/s.Ajmal Associates
For R1 to R4	: Mr.P.T.Thiraviyam Government Advocate
For R5	: Mr.K.Mahendran

ORDER

(Order of the Court was made by **R.SUBRAMANIAN, J.**)

The dispute relates to the attempt made by the Government to lay a Metal Road in a **plan - marked detailed cart track**. The land in Survey No.34/1B of Keezhmathikattinan Village of Madurai West Taluk, admittedly belongs to the petitioner. The revenue records also reflects the said position.



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2. It appears that there is a cart track as detailed in the Field Measurement Book [FMB] of Keezhmathikattinan Village of Madurai West Taluk. The Revenue Divisional Officer upon representation of one Elango on behalf of the people in the locality, passed an order under Section 133 of the Code of Criminal Procedure, directing removal of the encroachments over the said cart track made by the petitioner.

3. We find that the procedure prescribed under Section 133 of the Code of Criminal Procedure, has not been followed by the Revenue Divisional Officer. Be that as it may, Mr.M.Ajmalkhan, learned Senior Counsel appearing for the petitioner would submit that the petitioner is not preventing the use of the cart track by the Villagers. He is only objecting to the attempt made by the Government to lay a metal road in place of the cart track. This, according to him, is highly objectionable and the same is not allowed under the Revenue Standing Orders. Clause 15 of the Standing Order 26 of the Revenue Standing Orders deals with encroachments on plan – marked details. It reads as follows:-

*"15. Encroachments on plan - marked details : - A plan-marked channel or pathway running in a patta land is a Government land. **Eviction of encroachments in such lands need be invoked only in cases where the encroacher has interfered with the plan marked detail so as to close its entrance to and exit from his lands. In the***



case of pathways and cart tracks which have been used by the public till recently, the ryot should not be allowed to shift the course of the details to suit his own convenience. However, such diversions of plan marked channel from its original course, with a view to consolidate his holding or to facilitate irrigation of the portions which would be otherwise severed need not be treated as encroachment."

[Emphasis supplied]

4. Though clause 15 extracted above, declares that a plan - marked channel or pathway running in a Patta land is Government land, the power of the Government to remove encroachments over the same is restricted to maintaining it as a cart track or a channel. No further right is conferred on the Government to either alter the nature of it or the course of it, as it would straightaway offend Article 300-A of the Constitution of India.

5. The learned Senior Counsel appearing for the petitioner would make it very clear that the petitioner is not interfering with the user of the cart track as it is by the Public and his objection is only to laying a metal road in the place where the cart track is existing. In the light of the provisions of clause 15 of Revenue Standing Order 26, we will have to necessarily accept the said contention of the learned Senior Counsel appearing for the petitioner.



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6. While the right of the Government to maintain it as a cart track is recognized, any alteration is not permitted by the Revenue Standing Orders. If at all the Government wants to lay a metal road, it will be open to the Government to acquire the land in question by a process known to law and use it for any purpose that it deems necessary.

7. In view of the above, this Writ Petition is disposed of, permitting the Government to ensure that the cart track is preserved to the extent specified in Clause 15 of Revenue Standing Order 26. It is made clear that the Government cannot lay a metal road or use the cart track for some other purpose it deems fit. No costs. Consequently, connected Miscellaneous Petitions are closed.

(R.S.M, J.) (L.V.G, J.)
24.10.2024
(2/2)

Index : No

Neutral Citation : No

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L.VICTORIA GOWRI, J.

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ORDER MADE IN
W.P(MD)No.28957 of 2022
DATED : 24.10.2024