



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **22-01-2025**

CORAM

THE HONOURABLE MR JUSTICE S. S. SUNDAR

AND

THE HONOURABLE MR.JUSTICE P. DHANABAL

W.A. No. 2810 of 2021

AND

CMP Nos. 18574 of 2021 and 18576 of 2021

The Nilgiris Tea Estates Ltd
Rep.By Its Manager, Mailoor Estate,
Kullakamby Post, Coonoor Tk,
The Nilgiris- 6432 18.

Appellant(s)

Vs

1. G.Subbhaiyan
S/o.Gurusamy.

2. The District Collector,
Udhagamandalam
The Nilgiris District.

3.The District Revenue Officer,
Udhagamandalam,
The Nilgiris District.

4.The Revenue Divisional Officer,
Coonoor,
The Nilgiris District.



5.The Tahsildar,
Coonoor Taluk,
The Nilgiris District.

Respondents

Prayer : Writ Appeal is filed under Clause 15 of the Letters Patent to set aside the order passed by this Court in W.P.No.44048 of 2016, dated 05.10.2021.

For Appellant : Mr.C.A.Diwakar

For Respondents : Mr.P.Venkatraman - R1
Mr.A.Selvendran, Spl.GP – R2 to R5

JUDGEMENT

(Judgment of this Court was made Justice S.S.Sundar.)

This appeal is directed against the order of the learned Single Judge made in W.P.No.44048 of 2015 dated 05.10.2021, directing the respondents 1 to 4 to remove the obstructions, gates and erection of any structure in the cart track within a specified period and to take action against the 5th respondent, in case the 5th respondent resist the official respondents 1 to 4.

2. Heard the learned counsel for the appellant and the learned counsels appearing for the respondents.



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3. The first respondent in this appeal, as an individual, filed a writ petition in W.P. No. 44048 of 2016 for issuance of a mandamus directing the respondents to remove the obstructions made by the 5th respondent/appellant herein in survey no. 608/1, obstructing the public cart track at Melur Village, Coonoor Taluk, The Nilgiris District.

4. The case of the 1st respondent is that he owns a tea estate at Kottakkal, Melur Village, Coonoor Taluk, comprising survey no. 665/3, measuring about 4 acres and 75 cents. It is contended by the writ petitioner that there is a cart track running from Sengutarayan Malai lease Village to Manjacombai-Kullakamby Main Road, which runs through various survey numbers. It is not in dispute that the alleged cart track runs across private lands, particularly the land belonging to the 5th respondent, who is the owner of the land in survey no. 608/1. The case of the 1st respondent is that the cart track in survey no. 608/1 is the only way to reach the land belonging to the 1st respondent by vehicle.



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5. Based on the averments made in support of the grounds raised in the petition, the learned Single Judge allowed the writ petition by presuming that the cart track that passes through survey no. 608/1 is a public road and it is the only pathway available to the public. The learned Single Judge recorded that the public has been using the cart track from time in memorial. It is unfortunate to note that the 1st respondent/writ petitioner has not filed any revenue documents to show that the pathway exists as per the survey records or settlement records. Even as per the survey manual, the cart track should be detailed in the village map. In the absence of such a village map or any documents, the existence of a cart track cannot be presumed. Even if a public cart track exists in private land, the entire cart track should be sub divided as per the survey manual, if its width exceeds 4 meters. Therefore, in the absence of such records, it is unfortunate that the learned Single Judge has presumed existence of public cart track.

6. When a person, who is a third party, alleges rights of easement, there must be revenue records to support his case. Merely by making a request or filing a petition, the existence of such public cart



track cannot be presumed. The learned Single Judge in this case has gone to the extent of presuming such rights in favour of tribals and referred to provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, without any documents or materials. Assuming for a moment that the 1st respondent has a right of easement over the land belonging to the 5th respondent, it is for him to approach the Civil Court to obtain a declaration of such a right, and he cannot seek a mandamus through a writ petition.

7. We have perused the revenue map pertaining to survey nos. 608 and 662 produced by the learned Special Government Pleader appearing for the respondents 2 to 5. It is admitted that the entire property in survey no. 608 belongs to the 5th respondent and the existence of a pathway through Government lands is also disputed.

8. The revenue records clearly show that the land in survey no. 608/1 is patta land belonging to the 5th respondent. Therefore, there is no question of presuming the existence of a cart track. Even in the absence of revenue records to show that the particular property has been enjoyed



by the public as a common cart track, it can be established before the civil court.

9. In the absence of any documents or title, this Court is unable to sustain the order of the learned Single Judge allowing the writ petition. Accordingly, the impugned order of the learned Single Judge is set aside. The writ appeal is ***allowed***. No costs. Consequently, the connected miscellaneous petitions are closed. It is open to the 1st respondent to approach the civil court to establish his rights over the subject land.

(S.S.SUNDAR J.) (P.DHANABAL J.)

22-01-2025

Index : Yes
Internet : Yes
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