

**IN THE COURT OF THE PRINCIPAL DISTRICT MUNSIF, NAGERCOIL**

Present: **Thiru. R.Sundara Kamesh Marthandan, M.L.,**  
Principal District Munsif, (FAC) Nagercoil.

Thursday, on this the 12<sup>th</sup> day of September, 2024

**I.A.No. 1 of 2024**  
**in**  
**O.S. No. 203 of 2022**  
**CNR No. TNKK04-000405-2022**

K. Suyamboo

... Petitioner/ Plaintiff

-vs-

1. The District Collector  
Kanyakumari District  
Nagercoil & Post.

2. Assistant Divisional Engineer  
Highways Department  
NABARD & Rural Roads  
Water Tank Road,  
Nagercoil & P.O.

3. The Superintending Engineer,  
Highways Department,  
NABARD & Rural Roads,  
Tirunelveli & P.O.

... Respondents/Defendants

This Petition came up before me on 04.09.2024 for final hearing in the presence of Mr. N. Retnaswamy Advocate for the Petitioner/Plaintiff and Mr. C. Johnson Pleader doing Government Work for the Respondents/Defendants and upon hearing the Petitioner's and Respondents' Counsel and upon perusing the case records

and having stood over for consideration till this day, this Court hereby delivers the following:

**ORDER**

1. The Petitioner had filed the above petition seeking issuance of commission to make a local investigation of the Plaintiff schedule property and file report after noting the following points:-

1. To note the physical features of the Plaintiff Schedule Property.
2. To measure and prepare a plan in rest of the damaged area with the measurements and assess the value of the damages committed over the Plaintiff schedule property.
3. To note the gate way of the Plaintiff's house for his free access of his car and other vehicles.
4. Whether the Plaintiff is having any other gate way except, the plaintiff schedule gate way.
5. To note the rain water passing in front of the Plaintiff's two gate ways.
6. To note such other points that are brought to the notice of the Commissioner at the time of his visit.

2. The Petitioner has stated that he had filed the above suit for Mandatory Injunction, directing the Defendant to restore the Kal, Drainage and Platform for the gateway to the Plaintiff's free ingress and egress to reach the Plaintiff schedule property & vice versa and for recovery of damages of Rs. 27,000/- (Rupees Twenty Seven Thousand Only). The Petitioner owns 38 cents of house site in Re.Sy.No. 188/5 of

Neendakarai A West Village, along with four concrete buildings. The said property is surrounded, by compound walls and two big motorable gates, on it's Northern side, facing Pazhavilai to Vilathivilai Road.

3. The Plaintiff constructed buildings, as per approved plans. For free flow of drain water, on the road side drainage kal, the Plaintiff installed eight inches PVC Pipe, inbetween the road and the Plaintiff's compound wall. On 21.11.2019, without issuing any notice by the 2<sup>nd</sup> Defendant, their officials, demolished and destroyed the western side ramp, connecting the Plaintiff's house and the Road. The Plaintiff formed the rain water drainage system, three decades back, out of his own cost, without causing any obstruction, to the rain water flow.

4. On 21.11.2019 one Mr. C. Vijaya Regu, Assistant Engineer High Way Department, NABARD and Rural Roads, along with Musclemen and JCB had dismantled the rainwater drain system, available in front of Plaintiff's house and also destroyed the ramp, available in front of the Petitioner's gate. Because of that, the Petitioner could not smoothly access the road. Hence on 22.02.2020, the Plaintiff issued suit notice to defendant. On 04.03.2020 the Divisional Engineer issued reply. For the past two years and ten months, the Defendants have not constructed the drainage and water kal measuring 15 feet length and 7 feet width, including the platform. On 09.11.2022 the petitioner issued notice under Sec.80 CPC and filed the above suit. Hence it is necessary to make local investigation to note the above said points. Therefore the above Petition has been filed.

5. The Respondents have filed counter, stating that the above Petition is not maintainable. There is no sufficient cause to entertain the above Petition. The above Petition is misuse of process of Court. Allowing the above Petition amounts to collection of evidence. The same is not entertainable. The Petition is devoid of Merit and good faith. Hence the Respondents prayed for dismissal of the above Petition.

6. The point for consideration is whether the above Petition has to be allowed or not?

7. The Petitioner, having filed the above suit, seeking mandatory injunction against the Defendants had stated that the Defendants have not reconstructed the water kal, measuring 15 feet length and 7 feet width, for the past two years and ten months and the Petitioner could not have smooth access to the road, from his property. It is not out of place, to mention that a person having property, is entitled to have access to the public road, situated adjoining his property. At the same time, the flow of rainwater drainage should not be obstructed. Such being the case conducting local inspection, to ascertain the same will not amount to collection of evidence. The Petitioner's claim for damages could be established by him by produced necessary evidence before this Court. In view of the discussion made above the this court is considered view that the petitioner is entitled for the petition to relief.

In the result, the above Petition is allowed. Advocate Miss.V. Surya, Enrollment Ms. No.1433/2020, (Cell No.8056547508), Junior of Mr. R.Ravindran, is appointed as Advocate Commissioner. Her remuneration is fixed at Rs. 8,000/- (Rupees Eight Thousand Only) to be payable by the Petitioner, directly to the

Advocate Commissioner. The Advocate Commissioner, is directed to inspect the Plaintiff Schedule Property and note the following:

1. To note the physical features of the Plaintiff Schedule Property.
  2. To measure and prepare a plan in rest of the damaged area with the measurements and assess the value of the damages committed over the Plaintiff Schedule Property.
  3. To note the gate way of the Plaintiff's house for his free access of his car and other vehicles.
  4. Whether the plaintiff is having any other gate way except the plaintiff schedule gate way.
  5. To note the rain water passing in front of the plaintiff's two gate ways.
  6. To note such other points that are brought to the notice of the Commissioner at the time of his visit.
- and file report with plan, at the earliest.

Dictated to the Steno typist, typed by her, directly in Computer corrected and pronounced by me in Open Court this, the 12<sup>th</sup> day of September, 2024.

Sd/-

Principal District Munsif, (FAC)  
Nagercoil.

Petitioners side witnesses and documents :- Nil

Respondents side witnesses and Documents :- Nil

Sd/-

Principal District Munsif, (FAC)  
Nagercoil.

Fair/ Draft Order  
I.A.No.1 of 2024  
in  
O.S.No.203 of 2022  
Date: 12.09.2024.  
PDM, Nagercoil.

