

In the High Court of Judicature at Madras

Dated: 09.03.2015

CORAM:

The Hon'ble Mr.Justice SATISH K. AGNIHOTRI
and
The Hon'ble Mr.Justice M.VENUGOPAL

W.A.No.268 of 2015 and M.P.No.1 of 2015

1. The Collector
O/o Chennai Collectorate,
Chennai - 600 001
 2. The District Revenue Officer,
District Collector's Office,
Chennai - 600 001
 3. The Tahsildar,
Perambur - Purasawalkkam Taluk,
Chennai - 600 011
- ... Appellants/ Respondents
- Vs.
- 1.Victor Doss
2.D.M.Doss
- ... Respondents/Petitioners

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent Appeal against the order of this Court dated 04.08.2011 made in W.P.No. 8723 of 2011.

Writ Petition praying to writ of certiorarified mandamus, calling for the records relating to the third respondent vide proceedings No.O.M.A.4/31310/2010, dated 27.8.10 and to quash the same and consequently direct the third respondent to grant patta in respect of the property bearing comprised in R.S.No.27/1A2, Block No.2, T.S.No.25, No.68, Siruvallur village, Perambur.

For Appellants : Mr.P.S.Sivashanmugasundaram
Special Government Pleader

For Respondents : Mr.S.Vijayakumar

JUDGMENT

[Judgment of the Court was delivered by M.VENUGOPAL, J.]

The Appellants / Respondents have focused the present intra Court, Writ Appeal as against the order dated 04.08.2011 in W.P.No.8723 of 2011 passed by the Writ Court.

2.The Writ Court while passing the impugned order dated 04.08.2011 in W.P.No.8723 of 2011 (filed by the Petitioners) in Paragraph No.14 had inter alia observed that 'the petitioners approached the Principal Judge, City Civil Court, Chennai, by filing C.M.A.Nos.98 and 99 2001, against the order of the Estate Officer, under Section 5 of the Tamilnadu Public Premises (Eviction of unauthorised occupants) Act, 1975. The Principal Judge, City Civil Court, Chennai, allowed those appeals on 11.04.2003 and categorically held that petitioners had prima facie established that the suit lane is a private passage and not a Government Poramboke. The said finding of the Principal Judge, City Civil Court, Chennai was confirmed by this Court by order dated 23.03.2004 in C.R.P.Nos.1009 and 1094 of 2003. Hence the impugned order stating that the disputed lane is a poramboke lane, is contrary to the order of the Court in C.R.P.Nos.1009 and 1094 of 2003. The petitioners have established prima facie, that they are in possession for a very long time. In fact, the Principal Judge, City Civil Court, Chennai, held that the petitioners have established prima facie, that the suit lane is a private passage and not a Government poramboke' and resultantly quashed the impugned order dated 27.08.2010 of the 3rd Respondent and further directed the 3rd Respondent (3rd Appellant) to grant patta, as claimed by the Respondents/ Petitioners within a period of six weeks from the date of receipt of a copy of the order.

3.According to the Learned Special Government Pleader for the Appellants/Respondents, the impugned order passed by the Writ Court in W.P.No.8723 of 2011 dated 04.08.2011 is contrary to Law, Weight of Evidence and Probabilities of the case.

4.The Learned Special Government Pleader for the Appellants urges before this Court that the subject property is located in Siruvallur Village Block No.2, T.S.No.25, which is classified as 'Sarkar Poramboke - Boosthithi Sandhu' measuring an extent of 29.0 Sq.Mts, ie., 312 Square Feet.

5.Advancing his arguments, the Learned Special Government Pleader for the Appellants projects an argument that Joseph Maichael Franswah and Others had sold two plots with a common passage left between the two plots as per Document Nos. 771/1933 and 790/1935. Further more, one plot bearing old S.No.27/1A, Present T.S.No.23, 24 Block 2 measuring an extent of 3285 square feet was sold to Periyakammal W/o Saman and another plot bearing old Survey No.27/1A, Present T.S.No.26, Block 2 measuring an extent of 2384.5 square feet was sold to Mrs.C.Doss, mother of the Respondents/Petitioners.

6.It is the categorical stand of the Appellants that the common passage was not sold to an individual by said Joseph Maichael Franswah and Others and as such, the request of the

Respondents/Petitioners praying issuance of Patta in respect of the unsold land could not be considered.

7.It is represented on behalf of the Appellants that three feet lane is a common passage left in the year 1933 and 1935 itself and the boundaries mentioned in the documents clearly establish these facts and further no rights were given to any one over the ownership of the three feet common passage.

8.The clear cut plea of the Appellants is that Joseph Maichael Franswah and Others had sold two properties, one measuring an extent of 3285 square feet as per Document No.771/1933 and another property measuring 5 ½ cents (or) 2384 ½ square feet to Tully and Others vide Document No.790/1935, leaving the three feet lane between the two plots.

9. The Learned Special Government Pleader brings it to the notice of this Court that Mrs.C.Doss purchased only 2384 ½ square feet (or) only 5 ½ cents in terms of Document No.738/1948, but, while partitioning the property, the three sons of Mrs.C.Doss had partitioned an extent of 2614 square feet (A Schedule - 765 Square Feet, B Schedule - 938 Square Feet, C Schedule - 911 Square Feet) which establish that they had partitioned property including the three feet common passage and thereupon constructed buildings in the common passage also when they had no Rights over the said common passage. As such, it is only an encroachment made by them in the common passage.

10.The prime contention advanced on behalf of the Appellants is that the Respondents in the Town Survey Land Register by registering the subject land as 'Sarkar Poramboke - Boosthithi Sandhu' requires Classification Change to 'Ryotawari Manai - Boosthithi Sandhu', which requires Government approval and in this regard, proposals were sent for Change of Classification.

11.The Learned Special Government Pleader for the Appellants invites the attention of this Court to the fact that one Radhika filed a W.P.No.16037 of 2000 with a prayer to remove the encroachments made in the land by Victor Doss and his Brothers and in the said Writ Petition, this Court directed the removal of encroachments in the aforesaid land and therefore, Notices were issued under the Tamilnadu Encroachment Act, 1975 by the Personal Assistant to Collector and Estate Officer, Collector's Office, Chennai- 600 001, as per Proceedings No.J4/42831/2000 dated 12.06.2001 and one D.M.Doss obtained an order of Stay in C.M.P.No.779 of 2001 in CMA No.98 of 2001 and on 11.04.2003, the City Civil Court, Chennai allowed the petition and cancelled the Notices issued under the Tamilnadu Encroachment Act.

12.In reality, the Court observed that the complicated question of title of the respective parties will have to be adjudicated upon and decided conclusively only by the Civil Court and in fact, C.R.P.(NPD) Nos.1009 and 1094 of 2003 and C.M.P.Nos.10489 and 11568 of 2003 filed by one Radhika were dismissed by this Court on 23.03.2004.

13.That apart, it is brought to the notice of this Court on behalf of the Appellants that Radhika filed O.S.No.1944 of 2004 on the file of learned IV Assistant Judge, City Civil Court for impleading the Collector of Chennai and Tahsildar, Purasawalkam-Perambur Taluk as 3rd and 4th Respondents with a prayer for Declaration of a Right over the passage in the Southern Portion of her property and sought a Relief of Permanent Injunction restraining the Defendants from interfering with the right to have Right of Passage and as on date, the case is pending. The request of the Respondents/Petitioners seeking issuance of Patta could not be considered.

14.The Learned Special Government Pleader for the Appellants submits that the Respondents / Petitioners filed W.P.No.8723 of 2011 and this Court on 04.08.2011 had ultimately cancelled the Orders of the 3rd Appellant/ 3rd Respondent and directed him to issue Patta within a period of six weeks from the date of receipt of the order and in view of the non-compliance of the order passed by the 3rd Appellant/3rd Respondent, a Contempt Petition was filed by the Respondents/Petitioners against the then Tahsildar and the Tahsildar in a report to the Court had mentioned that the land is a Patta land and now, the same needs Change of Classification for issuing Patta and sent a Classification Change Proposal and indeed the 3rd Appellant/ Tahsildar had reported these facts before this Court in Contempt Petition No.124 of 2012 notwithstanding the fact that the said proposals were returned for want of full fledged report. In the meanwhile, this Court by its order dated 20.09.2012 in Contempt Petition No.124 of 2012 had impleaded the Collector of Chennai as 2nd respondent and dispensed with the appearance of the 3rd Appellant/Tahsildar, since it was reported by the Tahsildar that the Classification Change Proposals are pending in the 1st Appellant/Collector's Office, Chennai and that the Court had directed the 1st Appellant/Collector of Chennai by means of an Order dated 20.09.2012 in the said Contempt Petition, to pass appropriate orders on the proposals sent by the 3rd Appellant/Tahsildar within a period of three weeks from the date of receipt of the order.

15.The Learned Special Government Pleader for the Appellants contends that the 3rd Appellant/Tahsildar sent a detailed Proposal for Changing Classification of the Land and the related Documents, Files, Old Records and the Report of the 3rd Appellant/Tahsildar were perused and scrutinized and further that the proposal for changing the classification from 'Sarkar Poramboke' to 'Ryotwari

Manai' was sent to the Principal Secretary and Commissioner of Land Administration, Chennai as per Office Letter No. J4/15502/2012 dated 05.12.2012.

16. In response, it is the submission of the Learned Counsel for the Respondents/Petitioners that the Writ Court had borne in mind the finding rendered by the Principal Judge, City Civil Court Chennai in the Judgments in C.M.A.Nos. 98 and 99 of 2001 dated 11.04.2003 and the observations made by this Court in C.R.P.(NPD) Nos. 1009 and 1094 of 2003 dated 23.03.2004 and quashed the impugned order of the 3rd Respondent and further directed him to issue Patta to the Respondents/Petitioners within a six weeks period and the same may not be interfered with by this Court. It is also represented on behalf of the Respondents/Petitioners that two years before, they were issued with the Patta in the subject matter in issue.

17. It is to be borne in mind that the Estate Officer, sought to evict the Respondents/Petitioners on the footing that the disputed lane is a 'Poramboke Land'. Indisputably the Respondents/Petitioners projected C.M.A.Nos. 98 and 99 of 2001 against the order of the Estate Officer under Section 5 of the Tamilnadu Public Premises (Eviction of unauthorised occupants) Act, 1975.

18. At this stage, it cannot be lost sight that in the Common Judgment in C.M.A.Nos. 98 and 99 of 2001 on 11.04.2003, the Principal Judge, City Civil Court, Chennai had observed and held as under :-

"..... It is found that the Estate Officer has not properly adverted to the documents produced for consideration. The said officer has wrongly come to the conclusion that the suit lane is Poramboke Lane under the encroachment by the appellants. The points are answered accordingly....."

and consequently set aside the order passed by the Estate Officer in Ref.No.J4/42831/2000 dated 12.06.2001 and allowed the two Miscellaneous Appeals with cost.

19. It cannot be gainsaid that as against the common Judgment dated 11.04.2003 in C.M.A.Nos. 98 and 99 of 2001 passed by the Principal Judge, City Civil Court, Chennai, one Radhika filed C.R.P (NPD) Nos. 1009 and 1094 of 2003 before this Court and this Court by an Order dated 23.03.2004 in Paragraph No.9 had inter alia observed as follows:-

"9.....As already been adverted to, the Estate Officer has not properly considered the document produced by the first respondent and only in the said

circumstances, he passed the order which was erroneous and the same was set aside by the Court below, holding that the Estate Officer had come to a wrong conclusion that the southern boundary is a poramboke land without adverting to the document produced by any interfere by the first respondent and that finding also does not call for any interfere by this Court....."

20. It is to be remembered that the Respondents/Petitioners had established through the Court Proceedings that the Lane in issue is a Private Passage and the relevant Court Judgments/Orders beginning from C.M.A.Nos.98 and 99 of 2001 and C.R.P. (NPD) Nos.1009 and 1094 of 2003 between the interse parties are conclusive, final and binding on them.

21. Admittedly, the Appellants have not taken any steps as against the orders dated 23.03.2004 passed by this Court in Civil Revision Petition (NPD) Nos.1009 and 1094 of 2003. Suffice it for this Court to pertinently point out that the Writ Court had taken into account the relevant Judgments passed in Civil Miscellaneous Appeals and the Orders passed in the Civil Revision Petitions as referred to supra and it came to a crystalline conclusion that the Respondents/Petitioners had established prima facie that the Suit Lane is a 'Private Passage' and not a 'Government Poramboke' and the same is just and legally sustainable one in the eye of Law, warranting no interference in the hands of this Court sitting in the Appellate Jurisdiction. Consequently the Writ Appeal is Devoid of Merits.

22. In the result, the Writ Appeal is dismissed, leaving the parties to bear their own cost. Resultantly, the order of the Writ Court dated 04.08.2011 in W.P.No.8723 of 2011 is confirmed by this Court for the reasons assigned in this Appeal. Consequently, Connected Miscellaneous Petition is closed.

Sd/-

सत्यमेव जयते
Assistant Registrar

//True Copy//

ssd

Sub Assistant Registrar

To

1. The Collector
O/o Chennai Collectorate,
Chennai - 600 001

2. The District Revenue Officer,
District Collector's Office,
Chennai - 600 001

3. The Tahsildar,
Perambur - Purasawalkkam Taluk,
Chennai - 600 011

+lcc to Mr.S.Vijaya Kumar, Advocate, S.R.No.12973

+lcc to the Government Pleader, S.R.No.13619

W.A.No.268 of 2015 and
M.P.No.1 of 2015

MG(CO)
CA(24/03/2015)



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