

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:03.02.2015

CORAM

THE HONOURABLE MR.JUSTICE SATISH K.AGNIHOTRI
AND
THE HONOURABLE MR.JUSTICE M.VENUGOPAL

W.P.No.2500 of 2015
and
M.P.No.1 of 2015

B.K.Prabakar

.... petitioner

Versus

1.The District Collector,
Krishnagiri District,
Krishnagiri.

2.The Revenue Divisional Officer cum
Sub-Collector,
Hosur,
Krishnagiri District.

3.The Commissioner,
Hosur Municipality,
Hosur,
Krishnagiri District.

4.The Tahsildar,
Hosur Taluk,
Krishnagiri District.

5.Krishna Reddy

6.Viswanath

.... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus, calling for the records pertaining to the proceedings of the 2nd respondent in Pa.Mu.4111/2014 (P3) dated 19.01.2015 and quash the same as illegal, incompetent and ultravires and consequently direct the respondents to remove the encroachment made in S.No.6/1A1A4/23, Hosur, Krishnaigir District.

For petitioner : Mr.R.Jayaprakash

For Respondents : Mr.P.S.Sivashanmugasundaram,
Special Govt. Pleader.

O R D E R

(Order of the Court was delivered by M.VENUGOPAL,J.)

The Petitioner has preferred the instant Writ Petition in calling for the records relating to the to the proceedings of the 2nd Respondent in Pa.Mu.4111/2014 (P3) dated 19.01.2015 and to quash the same as an illegal, incompetent and ultravires one. Further, he has sought for passing of a consequential order in directing the Respondents to remove the encroachment made in S.No.6/1A/1A/1A4/23, Hosur, Krishnagiri District.

2. According to the Petitioner, the land at S.No.6/1A1A1A4/23, Hosur, Krishnagiri District is classified as Street in the revenue records, which is encroached by influential persons of the locality. Therefore, he addressed series of representation to the Respondents to remove the encroachment on public road but they were of no use. Hence, he filed W.P.No.3457 of 2014 praying for a relief of Writ of Mandamus in directing the Respondents to remove the encroachment made on the road.

3. At this stage, the Learned Counsel for the Petitioner refers to the order dated 17.03.2014 passed by this Court in W.P.No.3457 of 2014, which runs as under:

"2.We have heard the learned counsel appearing for the parties. From the additional typedset of papers filed by the writ petitioner, it is seen that the District Collector, Krishnagiri has already initiated action on the petitioner's representation and by Memo dated 06.02.2014 has directed the Tahsildar, Hosur Taluk, the fourth respondent to initiate appropriate action on the allegation that the respondent Nos.5 and 6 have encroached a public road and constructed shops." and submits that the 4th Respondent/Tahsildar, Hosur Taluk, Krishnagiri District was directed to proceed further, pursuant to the memo dated 06.02.2014 issued by the 1st Respondent.

4. The Learned Counsel for the Petitioner takes a plea that the 4th Respondent/ Tahsildar, Hosur Taluk, Krishnagiri District without conducting any survey or without verifying his own records passed an order in his proceedings in Na.Ka.No.26141/2013/C2 dated 11.06.2014 whereby and whereunder he had stated about the property

which is not at all connected with the dispute viz., S.No.6/1A/1A/1A4. In fact, it is represented on behalf of the Petitioner that the 4th Respondent/ Tahsildar, Hosur Taluk, Krishnagiri District had placed reliance on the documents of the encroachers, but had failed to look into the record viz., the 1st Respondent/District Collector proceedings dated 06.02.2014 and the order of this Court. Also that, the 4th Respondent/Tahsildar, Hosur Taluk, Krishnagiri District had done everything illegally, which forced the petitioner to file W.P.No.25613 of 2014 and in the said writ Petition on 19.11.2014, this Court in paragraph No.5 had observed the following

"As the matter in issue is pending before the Sub Collector, Hosur, the said authority is directed to finalise the proceedings already initiated and pass final orders in accordance with law, within a period of six weeks from the date of receipt of a copy of this order." and disposed of the writ petition by issuing direction.

5. The Learned Counsel for the Petitioner brings it to the notice of this Court that, in the meanwhile, the Village Administrative Officer, had inspected the property and found that as per revenue records six shops were constructed on the place earmarked as public street by blocking the same in putting up a 'Grill Gate'. Subsequently, the Town Surveyor, Hosur after making an inspection forwarded a report by mentioning the very same facts stated by the Village Administrative Officer and made it clear that the encroachment is on public road. Further that, the Special Tahsildar, Land Tax had forwarded a report stating that the public road was encroached by constructing six shops and also a 'Grill Gate'. In short, the 4th Respondent/ Tahsildar, Hosur Taluk, Krishnagiri District had forwarded the report in his proceedings in Na.Ka.No.26141/2013/C2 dated 15.09.2014 to the 2nd Respondent/RDO cum Sub Collector, Hosur, Krishnagiri District for having appropriate action and also for cancellation of patta.

6. The real grievance of the Petitioner is that the 2nd Respondent/ RDO cum Sub Collector, Hosur, Krishnagiri District in his proceedings in Pa.Mu.4111/2014 (P3) dated 19.01.2015 having found that the encroachment being made, had directed the 5th and 6th Respondents to remove a 'Grill Gate' alone and had not taken any steps to remove the encroachment made in regard to the construction of shops.

7. Advancing his arguments, the Learned Counsel for the Petitioner comes out with an emphatic plea that the impugned order passed by the 2nd Respondent dated 19.01.2015 is a blatant violation of the direction of his superior and also the order passed by this Court and as such the said order is liable to be set aside by this

Court, in furtherance of substantial cause of justice.

8. At this juncture, on perusal of the impugned order dated 19.01.2015 of the 2nd Respondent clearly points out that the land in S.No.6/1A/1A/1A4 of Hosur was originally a village Natham and subsequently, during the year 1991, the natham land tax scheme was brought into force and in terms of the said scheme, the aforesaid survey number was divided into several survey numbers and land in S.No.1193/23 was subdivided and recovered as 'street'. Further, as per final advertisement of natham land tax scheme in terms of Survey and Boundaries Act, 1923, 13 notification was not published in the gazette. In these circumstances, during the year 2000, since the said S.No.6/1A/1A/1A4 falls under Panchayat limits as per town land tax scheme, the aforesaid land was divided as Ward and Block. In the Town Survey Register, the concerned land was registered as Ward B Block 56 T.S.Nos.195 and 192. In the said Town Survey Register, Ward B Block 56 T.S.No.192 was described as 'Panchayat public way' and Ward B Block 56 T.S.No.195, was described as tiled house and a vacant space was mentioned as one belonging to that of Munireddy's children viz., 1.Krishna Reddy 2.Chandrasekara Reddy 3.Viswanatha Reddy 4.Narashimha Reddy's wife Muniamma in Town survey register.

9. That apart, it is also stated that during the year 2000, the initial town survey was held at Hosur and to check the said work, presently the town land tax scheme is in force as land tax scheme officer, Special Tahsildar is looking after the said work, which is being carried out for the past two years and still the said work is not completed and only after full completion of this work as per the Survey and Boundaries Act, 1923, a final notification under Section 13 will be notified by the Government.

10. Apart from the above, in the said memo of proceedings dated 19.01.2015 of the 2nd Respondent, it is also mentioned that during the year 1991, the land tax scheme survey was conducted. As per the Survey and Boundaries Act, 1923, final advertisement under Section 13 notification is not notified by the Government and also presently the town land tax scheme, through which the town survey measurement which took place during 2000, the work was not concluded in respect of issuance of patta and also the said work is continuing and therefore, only after completion of the works in entirety, the final advertisement 13 notification in terms of Survey and Boundaries Act would be notified by the Government. Therefore, the land right of individuals is not in a position to be determined and till date the said survey number in village account A register and in natham land tax scheme adangal and town survey register it is recorded as Government Porambokku. Till a final decision is to be taken, in the present survey number, the 'Grill Gate' put up by the respondents are advised to be removed by Muni Reddy's children viz., 1.Krishna Reddy 2.Chandrasekara Reddy 3.Viswanatha Reddy 4.Narashimha Reddy's wife

Muniamma, with a view not to cause any hindrance and also to enable the common public to use the same.

11. On a careful consideration of contentions advanced on behalf of the petitioner and also this Court taking note of the order passed in W.P.No.25631 of 2014 dated 19.11.2014 whereby and whereunder the Special Tahsildar, Hosur was directed to finalise the proceeding already initiated and pass final orders in accordance with law within a period of six weeks from the date of receipt of the copy of the order and also on going through the tenor and spirit of the impugned order passed by the second respondent in memo dated 19.01.2015 inter alia to the effect that "... only after issuance of final advertisement 13 notification by the Government under the Survey and Boundaries Act 1923, in regard to the land tax scheme land measurement made during the year 1991, the ownership of individuals could be decided and till a final decision is taken up by the Government in this regard, the direction to remove the iron gate put up by the respondents (mentioned in the impugned order) with a view to enable the common public to use the passage and not to interfere with the free movement, etc., this Court comes to an inevitable and inescapable conclusion that the impugned order does not suffer from any material irregularity or legal infirmity in the eye of law. Viewed in that perspective, the Writ Petition filed by the petitioner is devoid of merits.

12. In the result, this Writ Petition is dismissed, leaving the parties to bear their own costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsm

To

1.The District Collector,
Krishnagiri District,
Krishnagiri.

2.The Revenue Divisional Officer cum
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Hosur,
Krishnagiri District.

3.The Commissioner,
Hosur Municipality,
Hosur,
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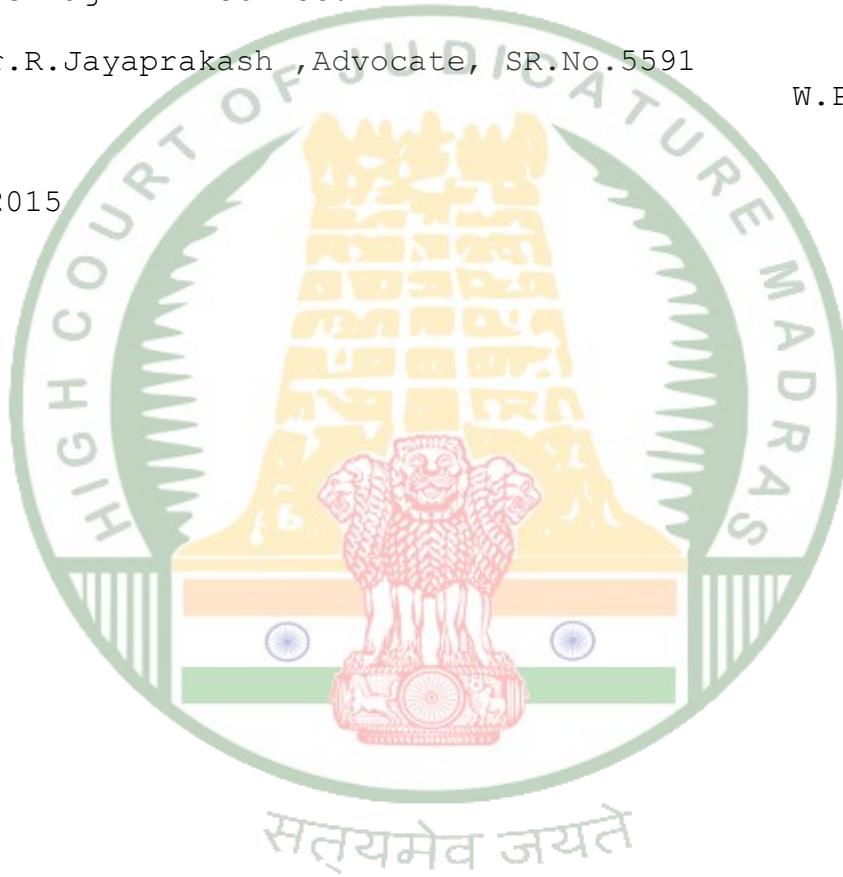
4.The Tahsildar,
Hosur Taluk,
Krishnagiri District.

5.The Special Tahsildar,
Hosur, Krishnagiri District.

1 cc to Mr.R.Jayaprakash ,Advocate, SR.No.5591

W.P.No.2500 of 2015

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