IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 6.10.2015

CORAM :

THE HONOURABLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.P. No.25232 of 2015

Gulshar Basha ... Petitioner

versus

1. The Collector
   Officer of the Collectorate
   Salem District

2. The Revenue Divisional Officer
   Attur Taluk Salem District

3. The Tahsildar
   Gangavalli Taluk Salem District

4. Abdul Kuddus
   S/o.Ibrahim Sahib Udyarpalayam
   Thammampathy Town and Post Gangavalli Taluk
   Salem District ... Respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the 3rd respondent passed in Na.Ka.3095-2003(A4) dated .06.2013 (12.6.2013) quash the same and consequentially direct the respondents to remove the encroachments made by the 4th respondent in the public lane in Thammampatty Village in Natham Survey No.504/4 measuring an extent of 0.0060.0 Square Meter.

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For petitioner : Mrs.N.B.Surekha
for Mr.M.L.Ramesh

For Respondents : Mr.N.Sakthivel,
Government Advocate,
for respondents 1 to 3
No appearance for 4th respondent

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O R D E R
(made by K.K.SASIDHARAN, J.)

The representation submitted by the petitioner to remove the encroachment made by the 4th respondent was rejected by the Tahsildar, Gangavalli Taluk, on account of the pendency of civil suits between the parties. The order dated 12 June 2013 on the file of 3rd respondent is under challenge in this Writ Petition.

2. It is the case of the petitioner that there is a public lane on the western side of his property. The petitioner is using the said lane as an access to his property. The 4th respondent claimed exclusive right in respect of the said lane. The attempt made by the petitioner to remove the encroachment was not successful on account of the stand taken by the Tahsildar that the issue could be resolved only after the disposal of the civil suit.

3. We have heard the learned counsel for the respective parties.

4. The factual matrix indicates that the 4th respondent has filed a suit in O.S.No.734 of 2004 against Annakodi and two others, before the District Munsif, Athur. The suit is one for permanent injunction. The petitioner on his part filed a suit in O.S.No.100 of 2005 along with three others for a decree of declaration that the said property is a common lane. The said suit is pending on the file of District Munsif, Athur.

5. When the parties are before the civil court, it would not be a sound exercise of jurisdiction to direct the Tahsildar to interfere in the matter and remove the alleged encroachment. It is not as if the suit filed by the 4th respondent alone is pending before the civil court. Even the suit filed by the petitioner against the 4th respondent is now pending before the District Munsif, Attur. Such being the factual position, the Tahsildar was correct in rejecting the request to remove the encroachment pending disposal of civil suits.

6. It is open to the petitioner to produce materials before the civil court in support of his contention that the lane in question is a public lane. It is also open to the petitioner to file appropriate application before the civil court for an early disposal of the civil suits.

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7. The Writ Petition is dismissed with the above observation. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Collector
   Officer of the Collectorate
   Salem District

2. The Revenue Divisional Officer
   Attur Taluk Salem District

3. The Tahsildar
   Gangavalli Taluk Salem District

+1cc to Mr.M.L.Ramesh, Advocate, S.R.No.54543
+1cc to the Government Pleader, S.R.No.54257

W.P. No.25232 of 2015

AD(CO)
CA(29/10/2015)

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