

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND

THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.P.No.6917 of 2015

and

M.P.No.1 of 2015

P.Ganesan

.. Petitioner

Vs.

1.The Collector,

Office of the Collectorate,
Namakkal District.

2.The Revenue Divisional Officer,

O/o.The Revenue Divisional Officer,
Tiruchengode Taluk,
Namakkal District.

3.The Tahsildar,

Office of the Tahsildar,
Tiruchengode Taluk,
Namakkal District.

4.The Executive Officer,

Padaiveedu Town Panchayat,
Tiruchengode Taluk,
Namakkal District.

5.Chinanan

6.Athiyanan

7.Kuppusamy

.. Respondents

This writ petition is preferred under Article 226 of the Constitution of India praying for the issue of a writ of mandamus directing the respondents 1 to 4 to remove the unauthorized construction namely compound wall constructed with hollow block bricks by the respondents 5 to 7, their agents or servants or any other men, around the 4th respondent panchayat land measures about 900 sq.fts (30 x 30), comprised in S.No.146/4, situated at Palakadu, Goundanoor, Padaiveedu village and post, Tiruchengode Taluk, Namakkal District on the basis of the petitioner's representation dated 31.1.2015.

For Petitioner : Mr.S.Viswanathan

For Respondents : Mr.P.S.Sivashanmugasundaram, Spl.G.P.
For RR1 to 3

ORDER

(The order of the Court was made by SATISH K. AGNIHOTRI, J.)

Seeking a direction to respondents 1 to 4 to remove the unauthorised construction, namely, compound wall constructed with hollow block bricks by the respondents 5 to 7 around the fourth respondent panchayat land measuring about 900 sq.fts (30 x 30), comprised in S.No.146/4, situated at Palakadu, Goundanoor, Padaiveedu village and post, Tiruchengode Taluk, Namakkal District, the writ petitioner has come up with this writ petition.

2. The case of the petitioner is that the grandparents of the petitioner had executed a settlement deed in favour of the fourth respondent panchayat in respect of the land measuring about 900 sq.fts, comprised in S.No.146/4, situated at Palakadu, Goundanoor, Padaiveedu village, Tiruchengode Taluk, Namakkal District, so as to enable the fourth respondent to dig a well and also to provide pathway for access to the benefit of public at large. The grievance of the petitioner is that the respondents 5 to 7 have constructed a compound wall on the public pathway, obstructing the free movement of the petitioner as well as other public.

3. In response to the notice, the third respondent Tahsildar has filed a counter affidavit, stating therein that the respondents 5 to 7 have constructed the compound wall in their part of the land and the donated land has not been subdivided till date. Basically, the dispute is between the petitioner and the respondents 5 to 7. In absence of any partition deed or division, the authorities are not in a position to consider the land as public road for extending the facility to the public at large. It is further said that the petitioner and the respondents 5 to 7 are co-pattadars in the subject matter of land.

4. The learned counsel appearing for the petitioner would submit that once the land in question has been donated to the panchayat, it is for the panchayat to maintain and ensure that the land, which is a public pathway, is free from any encumbrance and encroachment.

5. On the other hand, the learned Special Government Pleader appearing for respondents 1 to 3 would submit that the issue involves disputed question of facts and the same can be settled only by the competent jurisdictional civil court and as such, the writ petition is not maintainable.

6. Having considered all aspects of the matter and looking from all angles, we are of the considered view, on the basis of the affidavit and counter affidavit, the title and ownership of the land in question cannot be decided here and as such, proper court would be to take recourse to the competent jurisdictional civil court as provided under the provisions of law. Resultantly, the writ petition is dismissed as not maintainable. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vvk

To

- 1.The Collector,
Office of the Collectorate,
Namakkal District.
- 2.The Revenue Divisional Officer,
O/o.The Revenue Divisional Officer,
Tiruchengode Taluk,
Namakkal District.
- 3.The Tahsildar,
Office of the Tahsildar,
Tiruchengode Taluk,
Namakkal District.
- 4.The Executive Officer,
Padaiveedu Town Panchayat,
Tiruchengode Taluk,
Namakkal District.

- 1 cc to Government Pleader, Sr.No21061
1 cc to Mr.S.Viswanathan ,Advocate, SR.No.20796
1 cc to Mr.P.Valliappan ,Advocate, SR.No.20729

W.P.No.6917 of 2015

lrs(co)
pmk.4.5.2015