

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.05.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.11274 of 2016
and
W.M.P.No.9776 of 2016

T.Mohan

... Petitioner

-vs-

- 1.The District Collector
Cuddalore District
Officer of the District
Collector Office
Cuddalore District
Cuddalore, Tamilnadu
- 2.The Block Development Officer
Keerapalayam Panchayath Union
Keerapalayam, Chidambaram
- 3.The Thasildar
Office of the Thasildar Office
Chidambaram Taluk
Chidambaram
- 4.The Panchayath President
Office of the Sakkangudi Village
Panchayath
Sakkangudi Village
Chidambaram Taluk
Cuddalore District-608 201

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ of mandamus forbearing the respondents from erecting or put up any construction over the public road (paattai) bearing S.No.4/5, 4/6 and public canal (odai) bearing S.No.3/1 at Sakkangudi Village, Chidambaram Taluk, Cuddalore District and preserved the same as road (paattai), canal (Odai) as earmarked in the revenue record.

For Petitioner : Mr.P.R.Thiruneelakandan

For Respondents : Mr.R.Rajeswaran
Spl.Govt.Pleader for R1 & R3
Mr.S.Diwakar
Addl.Govt.Pleader for R2
Mr.R.N.Amarnath for R4

O R D E R

Reserved on : 12.04.2016

Pronounced on: 04.05.2016

Heard Mr.P.R.Thiruneelakandan, learned counsel for the petitioner, Mr.R.Rajeswaran, learned Special Government Pleader for the respondents 1 and 3, Mr.S.Diwakar, learned Additional Government Pleader for the second respondent and Mr.R.N.Amarnath, learned counsel for the fourth respondent.

2. The petitioner seeks for issuance of a writ of mandamus to forbear the respondents from putting up any construction over the property, situated at Sakkangudi Village, comprised in S.Nos.4/5 and 4/6, which are classified as "Paattai" and S.No.3/1, which is classified as "Odai".

3. At the outset it is pointed out that this writ petition is not a public interest litigation, but purely projecting private interest of the petitioner. The petitioner's case is that the land, comprised in Survey No.4/4B of Sakkangudi Village is his Patta land and the access to the said land is through the public road, comprised in Survey Nos.4/5 and 4/6 and if any construction is made over the public road, it would affect his ingress and egress to his property. It is further submitted that in the revenue records, the said lands are shown as "Paattai" and the respondents have a duty to maintain the road as it is and should not encroach into the land nor convert or re-classify the same for any other purpose. Insofar as the land in Survey No.3/1 is concerned, it is stated that in the revenue records, the same has been classified as "Odai" and therefore the respondents have no right to convert the same for a different purpose. The petitioner has claimed right over the land in Survey No.4/4B pursuant to the Partition Deed, dated 03.08.2012, between the petitioner's father Thiagarajan and his brothers T.Selvaraj and T.Moorthi.

4. The learned counsel for the petitioner, after referring to the factual matrix, invited the attention of this Court to the copies of A-Register and Adangal Extracts to establish his case. During the course of argument, the learned counsel for the petitioner filed an additional typed set of papers containing the copy of the plaint in O.S.No.297 of 2008, Judgment in O.S.No.263 of 2008, dated 06.07.2011, Affidavit in W.P.No.15154 of 2013 and the order of status quo granted in the said writ petition. With these facts, the learned counsel for the petitioner submitted that the respondents should be prevented from putting up any construction over the said property.

5. The learned counsel for the petitioner referred to the decision in the case of Tiruvarur Municipality vs. A.K.M.Towers, reported in CDJ 2012 MHC 4540 and also the decisions, which were referred to in the said Judgment for the proposition that a public street cannot be converted or used for any other purpose.

6. The learned counsel appearing for the respondents referred to the counter affidavit, in which the factual position has been stated, firstly, by stating that the petitioner has a right of access to his property in Survey No.4/4B through a metal road in R.S.No.4/3 and to the south of his property there is another road, namely, Chidambaram - Sethiathope road. Therefore, it is stated that the petitioner's right to access to his property has neither been deprived nor hindered in any manner. Further, the construction, which is being putting up by the respondents, is for Government School as the School, which was originally a Middle School, has been upgraded as a High School and therefore there is a requirement for additional space and therefore the Panchayat passed a resolution on 26.01.2005, allotting the lands in R.S.No.4/5, measuring 0.03.0 Ares; R.S.No.4/6, measuring 0.07.5 Ares and R.S.No.43, measuring 0.8650 sq.meters, to the Education Department for putting up construction of the School building. The Tahsildar, Chidambaram, has recommended the same and the Government has sanctioned a sum of Rs.1,60,00,000/- for the construction, which has commenced and the work has been completed upto foundation stage and at that juncture the present writ petition has been filed.

7. It is further submitted that the petitioner has also filed an earlier writ petition not to sanction or put up any construction in the property comprised in R.S.No.4/3 and his father has also filed a suit in O.S.No.263 of 2008, on the file of the learned Principal District Munsif, Chidambaram, for a decree of permanent injunction and the suit, after contest, was dismissed by Judgment, dated 06.07.2011 and the appeal preferred in A.S.No.34 of 2011 was also dismissed by Judgment dated 12.11.2011 and no second appeal was preferred and the Judgment in O.S.No.263 of 2008 has become final. Further, it is stated that the petitioner's brother T.Selvaraj filed a suit in O.S.No.297 of 2008, before the learned Principal District Munsif, Chidambaram, for the very same relief and the same is pending.

8. After hearing the learned counsel appearing for the parties and perusing the materials placed on record, it is clear that the present attempt of the petitioner is an abuse of process of Court, firstly for the reason that the petitioner has filed an earlier writ petition for virtually the same relief in W.P.No.15154 of 2013, which has been admitted by the petitioner in the affidavit filed in support of this writ petition. Having moved this Court earlier for an identical relief, the petitioner could not have filed the second writ petition for the very same relief. Hence, this writ petition is liable to be dismissed on this ground.

9. That apart, there is a serious doubt as regards the bona fide of the petitioner's claim. This Court is convinced to make such an observation in the light of the admitted facts. The petitioner's father Thiagarajan along with one Ganesan filed the suit in O.S.No.263 of 2008, before the learned Principal District Munsif, Chidambaram, for a decree of permanent injunction with an identical case, however restricted the prayer insofar as it

pertains to the property, comprised in R.S.Nos.4/3 and 43. The suit, after contest, was dismissed by Judgment, dated 06.07.2011, which has become final. The petitioner's brother filed a suit claiming to be filed on his behalf and on behalf of the Villagers of Sakkangudi Village with an identical prayer as that of the suit filed by his father and another in O.S.No.263 of 2008, which was dismissed.

10. Admittedly, no relief has been granted in favour of the petitioner's brother in the said suit, which is stated to be pending. From the counter affidavits filed by the respondents 2 and 4, it is seen that the suit filed by the father, after contest, was dismissed on 06.07.2011, and the appeal preferred in A.S.No.34 of 2011 was dismissed by the Sub Court, Chidambaram, by Judgment dated 12.11.2011. Thus, the petitioner's father filed the suit claiming that he is entitled to free access to his property and the road should not be altered. The petitioner's brother also came forward with a similar relief, but styled his suit as if in a representative capacity.

11. The petitioner filed the first writ petition in 2013 and the present writ petition is filed very recently i.e., on 24.03.2016. In the writ petition filed during 2013, the petitioner claimed that the land comprised in Survey No.4/1B of Sakkangudi Village, is his Patta land allotted to him by partition. In the said case, the petitioner contended that his brother obtained a decree of permanent injunction in O.S.No.297 of 2008 and therefore construction cannot be put up in the lands in R.S.No.4/3 and 43. Thus, the earlier writ petition was filed solely on the basis that the petitioner's brother secured a decree of injunction against the respondents. It is very doubtful as to whether the petitioner could have sought for such a relief when the plaintiff in the suit if aggrieved ought to have moved the Court when the allegation is that road cannot be formed when there is a decree of injunction. Obviously, the petitioner cannot approach this Court as if this Court is an Executing Court to execute the Judgment of the Civil Court. This writ petition is also for an identical relief except the fact that the petitioner has added one more survey number, namely, Survey No.3/1 and stated that it is classified as "Odai" and it cannot be used for construction of any building.

12. From the counter affidavit, it is clear that no part of the land in Survey No.3/1 has been utilized for putting up any construction. In this writ petition, curiously enough, the petitioner in the prayer portion has not referred to the Survey Nos.4/5, 4/6 and 3/1 and stated that no construction should be put up in the said land as they are classified as "Paattai / Odai". In Paragraph No.7(a) of the affidavit, the petitioner has stated that the land in Survey No.4/4B is his Patta land. However, the affidavit does not clearly state as to how he acquired title to the property, but copy of the Partition Deed, dated 03.08.2012, between himself, his father and brothers has been filed. However, there is no averment in the affidavit specifically referring to the Partition Deed, Date and the Survey Numbers. Thus, if the

petitioner claims himself to be the owner of the property as on date based on the Partition Deed, at best, it can confer individual right in favour of the petitioner only after the document was executed i.e., on 03.08.2012 and prior to the same the property was enjoyed by the petitioner's father Thiagarajan, who had filed the suit in O.S.No.263 of 2008. The Civil Court, after considering the oral and documentary evidence, dismissed suit and the Judgment has become final. Thus, the present attempt of the petitioner is to reopen the settled issues by initiating successive legal proceedings before the Civil Court by his brother and before this Court by him. Therefore, this Court has no hesitation to hold that the petitioner is not entitled to for any relief in this writ petition.

13. The project conceived and implemented is for public good especially when it is for construction of a school building. The photographs produced by the second respondent shows that the construction has been completed upto foundation level and pillars have been raised and part of the pillars' concrete work is over. Huge loads of building materials are lying at site. The cost of construction is being met by a Government Scheme and therefore the respondents should be permitted to proceed further with the construction.

14. For all the above reasons, this Court is of the view that the petitioner has not made out any ground to grant the relief sought for and in the light of the factual position stated above, there would be no necessity to examine the decisions referred to by the learned counsel.

15. In the result, the writ petition fails and it is dismissed. No costs. Consequently, connected writ miscellaneous petitions is closed.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

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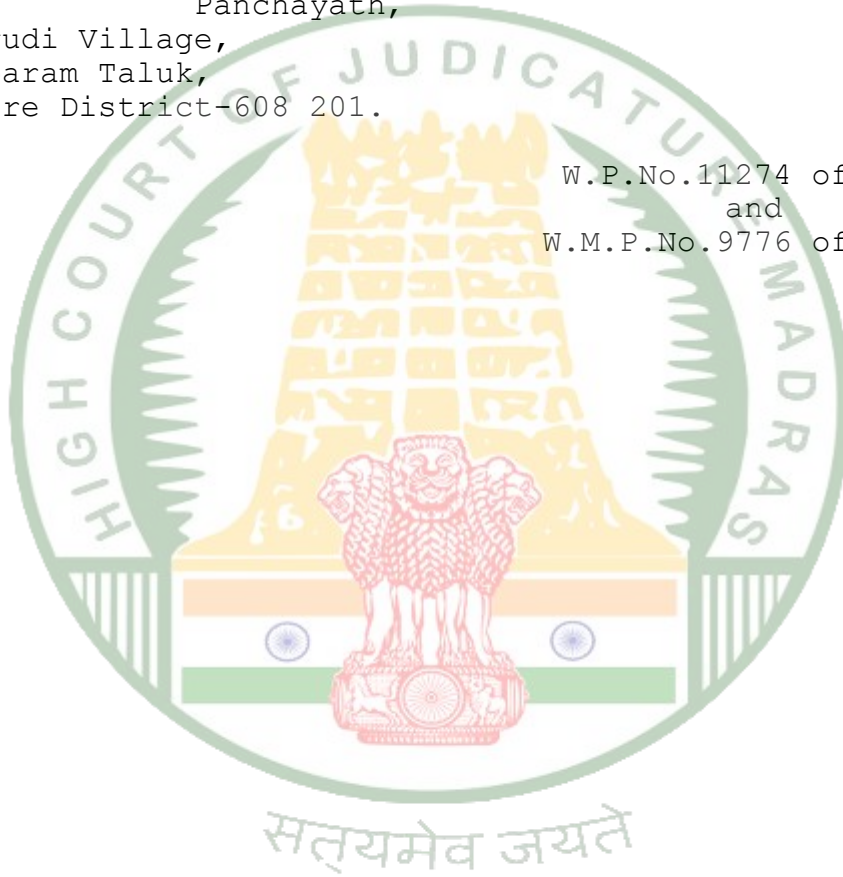
To:

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Officer of the District
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