

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.02.2016

CORAM

The Honourable Mr.Justice R.SUBBIAH

W.P.No.1074 of 2014

and

M.P.Nos.1 & 2 of 2014 & M.P.No.1 of 2015

S.P.Velu

... Petitioner

...vs...

1.The Tahsildar,
Veppanthattai Taluk,
Perambalur District.

2.K.Periyasamy,
W/o.Kaliappa Gounder,
Muthukalipattiyar Thottam,
Veppanthattai (Taluk),
Perambalur District.

...Respondent

Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorari calling for the records in Na.Ka.No.VV/13/132148, dated 27.12.2013 passed by the 1st respondent and to quash the same.

For Petitioner : Mr.A.S.Balaji

For Respondents : Mr.V.Jayaprakash Narayanan, Spl.GP.
(For R1)

Mr.R.Murali (For R2)

ORDER

This writ petition has been filed by the petitioner praying for issuance of a writ of certiorari, to call for the records pertaining to the order in Na.Ka.No.VV/13/132148, dated 27.12.2013 passed by the 1st respondent and to quash the same.

2.In the affidavit filed in support of the writ petition, it has been averred by the petitioner that he is the owner of the land measuring to an extent of 1.79 hectares in Survey No.337/2B1 and Patta No.583 in respect of the said land has been issued in his name. While so, the petitioner received a notice dated 28.11.2013 from the 1st respondent calling upon him

to appear before the 1st respondent with all relevant documents on 04.1.2013 at 5.00 pm, for an enquiry relating to the petition filed by the 2nd respondent herein for transfer of patta.

Again, a notice dated 09.12.2013 was received to the petitioner to attend an enquiry before the 1st respondent on 18.12.2013 at around 11.0 am. The petitioner appeared before the 1st respondent on 18.12.2013 and produced all the documents as required by the 1st respondent. Thereafter, a detailed order was passed by the 1st respondent dated 20.12.2013 rejecting the application filed by the 2nd respondent seeking for pathway in Survey No.337/2B1, on the ground that the patta stands in favour of the Tamil Nadu Bhoomidhana Board, which was communicated to the petitioner on 24.12.2013. The 2nd respondent seems to have filed a petition before the 1st respondent on 23.12.2013 for the very same reason i.e, providing pathway in Survey No.337/2B1. The 1st respondent without issuing any notice to the petitioner, has passed the impugned order dated 27.12.2013 stating that a 25 feet pathway has been in existence for the past 15 years and that the petitioner do not have any right over the pathway and a direction has been issued to the petitioner to remove the encroachment over the pathway on or before 07.01.2014. Aggrieved over the same, the petitioner has come forward with the present writ petition.

3. When the writ petition came up for hearing on 10.1.2014, this Court passed an interim order of status quo.

4. Thereafter, the respondents have filed petitions seeking to vacate the interim order of status quo.

5. In the counter affidavit it has been stated by the 2nd respondent that originally the land measuring to an extent of 12.51 cents in Survey No.338/1 situated at Mallaiyallapatti Village, Veppanthattai Taluk, Perambalur District was owned and possessed by the petitioner's father Palanivelu and on his death, the said land devolved upon the petitioner and other legal heirs. In the year 2001, the 2nd respondent purchased an extent of 4.52 ½ cents out of acre 12.51 cents from the petitioner and other legal heirs of the petitioner's father Palaivelu, for a valuable sale consideration, in and by Sale Deed dated 23.04.2001 registered as Doc.No.2108 of 2001 on the file of the Sub-Registrar, Veppanthattai. The said land was conveyed by the petitioner and other legal heirs, along with the right of usage of the cart track running in Survey Nos.335/2B2B, 337/2B1 and 338/1. Pursuant to the said sale deed, the 2nd respondent has been in absolute possession and enjoyment of the said land, along with usage of the cart track, without any hindrance from any one. The said cart track running in Survey Nos.335/2B2B, 337/2B1 and 338/1 acts like a bridge in connecting the outer world with the adjacent lands and it is also being used by the general public and adjacent land owners to transport their agricultural produces. The said cart track is the only passage connecting the outer world with the land comprised in Survey No.338/1 purchased from the petitioner. With a view to secure direct access to the said cart track, the 2nd respondent has also bought the land comprised in Survey No.338/2 from the third parties. Both the lands are being cultivated by the 2nd respondent and thus he is eking his livelihood from the same. While the facts being so, the petitioner illegally destroyed and

encroached upon the cart track without any authority and also prohibited the usage of the said cart track. Hence, the 2nd respondent made representation dated 21.11.2013 to the 1st respondent seeking to ensure his right to passage in Survey Nos.335/2B2B/ 1B & 337/2B1. On the said representation, the 1st respondent conducted an enquiry; but, the 1st respondent dismissed the representation by an order dated 20.12.2013 holding that the land comprised in Survey No.337/2B1 belonged to Tamil Nadu Bhoomidhan Board. However, the 2nd respondent once again filed a petition dated 23.12.2013 detailing his right of passage in the said lands, which was denied and destroyed by the petitioner. Once again, the 1st respondent conducted an enquiry and passed the impugned order stating that the passage measuring to an extent of 25 ft. runs in the lands comprised in S.Nos.337, 335 & 338 for more than 15 years, which belonged to the Tamil Nadu Bhoomidhan Board and thus, directed the petitioner to remove the encroachments in the passage. Therefore, according to the 2nd respondent, there is no infirmity in the impugned order passed by the 1st respondent. Thus, the 2nd respondent has sought for vacating the interim order and consequently, to dismiss the writ petition.

6.The 1st respondent has also filed counter stating that the subject land is owned by the Bhoomidhan board and the petitioner has no right over the subject land; hence, there is no illegality in the impugned order passed by the 1st respondent. Thus, he sought for dismissal of the writ petition.

7.Heard the learned counsel for the petitioner, the learned counsel for the 2nd respondent and the learned Special Government Pleader appearing for the 1st respondent and perused the materials available on record.

8.It is the only submission of the learned counsel for the petitioner that the first petition dated 21.11.2013 filed by the 2nd respondent claiming right over the subject pathway/cart track was dismissed by the 1st respondent on 20.12.2013. After dismissal of the first petition, without giving any opportunity to the petitioner, the 1st respondent has passed the impugned order on 27.12.2013, directing the petitioner to remove the encroachment in the subject pathway; that actually, the said pathway is in possession of the petitioner for a long time.

9.Per contra, the learned counsel for the 2nd respondent submitted that when the 2nd respondent purchased the property from the petitioner and the other legal heirs of the petitioner's father, the subject pathway/cart track was also conveyed in favour of the 2nd respondent.

10.It is the submission of the learned Special Government Pleader that the subject land belongs to the Bhoomidhan Board and the petitioner has no right over the subject land; therefore, no infirmity could be found in the order passed by the 1st respondent.

11. But, in my considered opinion, the only submission of the learned counsel for the petitioner is that the impugned order has been passed without affording any opportunity to the petitioner. Even on going through the impugned order dated 27.12.2013, it appears that no opportunity of hearing was given to the petitioner by the 1st respondent before passing the impugned order. Therefore, without going into the merits of the claim made by the parties, by setting aside the impugned order, the matter could be remanded back to the 1st respondent for fresh consideration.

12. Accordingly, the impugned order is set aside and the 1st respondent is directed to conduct a fresh enquiry, by affording opportunity to the petitioner as well as to all other necessary parties and pass a fresh detailed order, within a period of six weeks from the date of receipt of a copy of this order.

With the above terms, the writ petition is allowed. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

ssv

To

1. The Tahsildar,
Veppanthattai Taluk,
Perambalur District.

1 cc to M/s. A.S. Balaji, Advocate Sr.8665

+ 1 cc to Mr.R.Murali, Advocate Sr 12834 (18/3/16)

RSI (CO)
Eu 11/03/16

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