

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.14253 of 2015
and
MP.Nos.1 and 2 of 2015

Manohar

... Petitioner

vs.

- 1.The District Collector,
Kancheepuram,
Kancheepuram District.
- 2.The Revenue Divisional Officer,
Tambaram, Kancheepuram District.
- 3.The Tahsildar,
Sholinganallur Taluk,
Kancheepuram District.
- 4.The Village Administrative officer,
Pallikarani Village,
Sholinganallur Taluk,
Kancheepuram District.
- 5.Meenakshi Nagar Kudieruppor Nala Sangam
rep. by its authorised person,
Pallikarani Village,
Sholinganallur Taluk,
Kancheepuram District.

... Respondents

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari to call for the records of the order passed by the second respondent in his proceeding in Mu.Mu.468/2013/A dated 13/03/2014 and subsequently quash the same.

For Petitioner : Mr.D.Magesh
For R1 to R4 : Mr.S.Pattabiraman, GA
For R5 : Mr.S.Vijay

ORDER

Challenging the order of the second respondent dated 13.03.2014, the petitioner has filed the present writ petition.

2. It is the case of the petitioner that the land in Survey Nos.377/2, 377/4A, 377/5A, 377/4, 377/8, 377/5 situated at Sri Karpagavinayaga Nagar, Pallikarani Village, Kancheepuram District measuring to a total extent of one acre twenty four cents, under Patta No.788 belonged to one Vedhachalam. After the death of the said Vedhachalam on 24.01.1993, the land in question was succeeded by his legal heirs numbering six persons, out of which, five legal heirs executed a release deed in favour of the sixth legal heir viz., Geetha in respect of the land in S.No.377/4A measuring to an extent of 2450sq.ft. and in S.No.377/4B measuring to an extent of 682 sq.ft. vide Document No.5035 of 2005 dated 14.07.2015 on the file of the Saidapet Joint Registrar-1. The said Geetha is none other than the wife of the petitioner herein. All the revenue records pertaining to the said land stand in the name of the petitioner's wife. From the date of the release deed, the petitioner and his wife Geetha have been in possession and enjoyment of the same and his wife died on 23.06.2011. While so, on 16.04.2015, the members belonging to the fifth respondent Sangam attempted to evict the petitioner on the ground that the land in question is a common path way. Hence, he lodged a complaint before the Pallikarani Police station. On receipt of the same, a notice was issued for enquiry on 18.4.2014, on which date, the petitioner was served with the copy of the order passed by the second respondent dated 13.03.2014, wherein, the patta granted in favour of the petitioner's wife was cancelled and a direction was given to declare the land as 'Road' and to remove the encroachment. Aggrieved over the same, the petitioner is before this court with the present writ petition for the above stated relief.

3. Denying the averments made in the writ petition, the fifth respondent Sangam filed a counter affidavit, wherein, it has been stated as follows:

(i) Meenakshi Nagar was created with a proper layout and the plots were laid from the year 1982. As per the plan, there are five streets, two main Roads, Vivekananda Street and Perumal Koil Street. The said Meenakshi Nagar was formed in

S.No.377 by one Vedachalam, who is none other than the father-in-law of the petitioner herein. The said Vedachalam died in 1993, whereas, the release deed was created after 12 years i.e., in the year 2005.

(ii)The petitioner's wife Geetha had illegally occupied the Panchayat Road and claimed it to be her property. She had filed I.A.No.3586/2008 in O.S.No.965/2008 before the Principal District Munsif, Alandur for an order of ad-interim injunction restraining the respondent therein from in any manner interfering with the peaceful possession and enjoyment of the property in question. The said application was dismissed by an order dated 18.12.2009.

(iii)The petitioner is employed as a constable in the Tamil Nadu Police Department and has created a forged release deed bearing Document No.5035/2005 dated 14.07.2005 in favour of his wife. By using his police force, he has instructed Pallikarani Panchayat not to lay the road or to erect street lights. Further, he has approached this Court by way of the present writ petition, with unclean hands.

(iv)The petitioner has grabbed the land in question by a created document and he blocked the entire junction, so as to prevent the 5th street plot owners to make entry from the 1st main Road to Vivekananda Street, Perumal Koil Street and 5th Main Road. In this regard, the fifth respondent gave various complaints to the Police authorities requesting to take against him for his illegal land grabbing and also to Pallikarani Panchayat to lay a road and to provide water and sewerage facilities to the people residing there.

(v)Based on the representation submitted by the fifth respondent, the Tahsildar, Sholinganallur Taluk, after conducting a detailed enquiry, filed his report on 19.04.2013 in Na.Ka.No.3188/2013 to the second respondent, who inturn issued a notice, calling upon the parties including the wife of the petitioner, for enquiry. Accordingly, they appeared and made their oral submissions. Based on the same, the impugned order came to be passed by the second respondent. By stating so, the fifth respondent prayed for the dismissal of the writ petition.

4. Learned counsel for the petitioner submitted that from the date of the release deed, the petitioner and his wife Geetha have been in possession and enjoyment of the land in question and patta was granted in the name of his wife as early as on 06.04.2006 itself. Further, he submitted that the second respondent, without conducting enquiry, passed the impugned order, by cancelling the patta granted in favour of the

petitioner's wife. Therefore, the impugned order is illegal and against the principles of natural justice.

5. Per contra, learned Government Advocate appearing for the respondents 1 to 4 produced the relevant files along with Topo plan to the effect that the land, which is under the occupation of the petitioner, has been shown as 'Road'. Further, he submitted that the second respondent, before passing the impugned order, conducted enquiry, however, the petitioner failed to avail the opportunity provided by the second respondent. Therefore, there is no violation of the principles of natural justice and the impugned order is passed by the second respondent based on the available materials, in accordance with law.

6. Learned counsel for the fifth respondent reiterated the averments as stated in the counter affidavit filed by the fifth respondent.

7. Heard the submissions made by all the parties and perused the materials placed before this Court.

8. In this writ petition, the petitioner has challenged the order dated 13.03.2014 passed by the second respondent by cancelling the patta granted in favour of the petitioner's wife Geetha and by directing to mark the land in question as Road and to remove the encroachment. It is the specific contention of the petitioner that from the date of release deed, the petitioner and his wife have been in possession and enjoyment of the land in question and patta has also been granted in favour of his wife on 6.4.2006. Such contention raised on the side of the petitioner is seriously opposed by the learned Government Advocate appearing for the respondents 1 to 4, by stating that the land which is under the occupation of the petitioner has been marked as Road. In support of his contention, the learned Government Advocate has also produced the files and Topo Plan pertaining to the said land. According to the fifth respondent, the petitioner is employed in the Police department and he grabbed the said land with the help of his wife by using his police force. In my considered opinion, such disputed facts cannot be gone into by this Court in this writ petition.

9. However, the submission made by the learned counsel for the petitioner that no sufficient opportunity was provided to the petitioner, before passing the impugned order by the the second respondent, cannot be slightly brushed aside. Therefore, in order to provide an opportunity to the petitioner, so as to

enable him to substantiate his claim, this Court is inclined to set aside the impugned order.

10. Accordingly, the impugned order dated 13.03.2014 passed by the second respondent is set aside and the matter is remitted back to the second respondent for passing a fresh order. The petitioner is permitted to produce all the documents in support of his claim along with a copy of this order to the second respondent within a period of two weeks from the date of receipt of a copy of this order. On production of such documents, the second respondent is directed to conduct an enquiry by affording an opportunity of personal hearing to the petitioner as well as to the fifth respondent and all the necessary parties, if any and pass appropriate orders, within a period of six weeks thereafter. It is made clear that this Court is not expressing any opinion with regard to the merits of the claim made by the petitioner and it is for the second respondent to pass appropriate orders purely on merits and in accordance with law.

11. The writ petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1.The District Collector,
Kancheepuram, Kancheepuram District.

2.The Revenue Divisional Officer,
Tambaram, Kancheepuram District.

3.The Tahsildar, Sholinganallur Taluk,
Kancheepuram District.

4.The Village Administrative officer,
Pallikarani Village,
Sholinganallur Taluk, Kancheepuram District.

+1 cc to Mr.D.Magesh, Advocate, sr.18159

W.P.No.14253 of 2015

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klra 03.05.2016