

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.10.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.No.12135 of 2010 and  
M.P.No.1 of 2010

1. Y.J.Shabbir
2. S.Fakhruddin
3. S.J.Ali Asger

...Petitioners

-Vs-

1. The District Collector,  
Kancheepuram District,  
Kancheepuram.

2. The Tahsildar,  
Chengalpet Taluk,  
Chengalpet.

3. The Revenue Inspector,  
Kelampakkam.

4. The President,  
Pudupakkam Panchayat,  
Pudupakkam.

5. The Village Administrative Officer,  
Pudupakkam,  
Chengalpet Taluk,  
Kancheepuram District.

6. Block Development Officer,  
Pudupakkam,  
Kelampakkam.

7. Sub Inspector of Police,  
Pudupakkam Police Station,  
Kelampakkam.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus forbearing the respondents or their men or agents or anyone claiming under them

from in any manner interfering with the petitioners lands in Survey Nos.146/1, 146/2, 146/3A, 146/3B, 146/4, 146/7, 146/8A, 146/8B in Pudupakkam Village, Chengalpet Taluk, Kancheepuram District of a total extent of 88 Ares or about 2.17 Ares.

For Petitioner : Mr.P.Srinivas  
For Respondents1,2,3,5,6 : Mr.Sanjay Gandhi, AGP  
R4 Mr.G.Nagarajan

#### O R D E R

The petitioners have come up with the present writ petition seeking a writ of mandamus forbearing the respondents or men or agents or anyone claiming under them from in any manner interfering with the petitioners lands in Survey Nos.146/1, 146/2, 146/3A, 146/3B, 146/4, 146/7, 146/8A, 146/8B in Pudupakkam Village, Chengalpet Taluk, Kancheepuram District of a total extent of 88 Acres or about 2.17 Acres.

2. The subject land according to the petitioner viz., lands in Survey Nos.146/1, etc., in Pudupakkam Village, Chengalpet Taluk, Kancheepuram District belong to the petitioners. In the year 2010, petitioners noticed some road laying work was about to start in the said land, at the instance of the 4th respondent/village panchayat. The petitioners further submits that on enquiry, it was revealed that the panchayat wanted to lay road leading to the burial ground ofcourse on the patta land belonging to the petitioner. Therefore, the petitioners have approached this Court by filing the present writ petition with the above said prayer.

3. The 4th respondent/village panchayat represented by the learned counsel, Mr.G.Nagarajan would submit that the land on which the panchayat want to lay road is already used as a road or pathway for the village people to approach the burial ground.

4. During the pendency of the writ petition by order dated 05.8.2010, this Court directed the District Collector i.e., the first respondent to file a report, pursuant to which, the District Collector filed a report. The relevant portion reads thus:

"It is submitted that as per the directions of the Hon'ble High Court, Madras, S.Nos. 146/1, 146/2, 146/3A, 146/3B, 146/4, 146/7, 146/8A, 146/8B and other related survey numbers in 41-Pudupakkam Village of Chengalpattu Taluk in Kancheepuram District have been surveyed in the presence of the petitioners along with concerned Government officials. The following observations are submitted before the Hon'ble High Court;

'1) A road having width of 11.2 meter and 38 meter in length on the eastern side of the patta land in S.No.146/4 is leading from the Road Poramboke in S.No:145, to the Burial Ground in S.No:146/5. This road runs in North-South direction in the petitioner's patta land.

2) Even though this road is in the existence of the Patta Land, the villagers are using the road under dispute, to reach the burial ground."

5. Heard the learned counsel for the respective parties.

6. It is not in dispute that the road sought to be laid by the village panchayat is running only through the petitioners' patta land and the same is also accepted by the first respondent/District Collector through his report. However, the first respondent has also stated in his report that even though the road is in existence of the patta land, the villagers are using the land in dispute to reach the burial ground.

7. In view of the above said facts, this Court is of the view that the dispute arises pertaining to the ownership as well as usage of the land wherein the new road could be laid, is purely a civil dispute and whatever rights claimed by the respective parties cannot be resolved and decided only by a competent civil court.

8. The respective learned counsels are not disputing this legal position and therefore, the petitioners are permitted to approach the competent civil court to establish their rights on the subject land and in that eventuality all necessary parties including the village panchayat, Revenue Department can be added as parties and ultimately, the issue can be resolved once for all by the competent civil court. The petitioners are given time for three months to approach the competent civil court from the date of receipt of a copy of this order. Till such time, the respondents shall be restrained from taking any activities of laying the road. In the meanwhile, if any contingency arises to approach the burial ground, the petitioners could not make any objection for that usage. It is made clear that such permission given to the people for approaching the burial ground by the petitioners would not make anyone to claim as a right.

9. Writ petition is disposed of with the above observations.  
No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

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Kancheepuram District,  
Kancheepuram.

2. The Tahsildar,  
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+1cc to Mr.G.Nagarajan, Advocate Sr.57913

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srg 02/12/2016