

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.2708 of 2016

and

W.M.P.No.2260 of 2016

Lakshmi ... Petitioner

Vs.

1. The District Collector,
Namakkal District, Namakkal
 2. The Block Development Officer, (Panchayat),
Mohanur Panchayat Union,
Mohanur, Namakkal District.
 3. The President,
Arasanatham Village Panchayat,
Mohanur Panchayat Union,
Namakkal District.
- ... Respondents

PRAYER : Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the 1st respondent to take appropriate action on the 3rd respondent based on petitioner's representation dated 19.6.2015 given to the 1st respondent.

For Petitioner : Mr.V.R.Annagandhi
For Respondents : Mr.P.Sanjay Gandhi,
Addl. Govt. Pleader (R1 and R2)
Mr.S.Kalyanaraman (R3)

O R D E R

The petitioner has come forward with this Writ Petition seeking for issuance of Mandamus upon the 1st respondent to take appropriate action on the 3rd respondent for usurping her property situate in Survey No.117/4D of Arasanatham Village, Namakkal Taluk, Namakkal District, based on the representation of the petitioner dated 19.6.2015.

2. It is stated in the petition that the petitioner is the owner of the property measuring an extent of 1 acre and 6 cents

in Survey No.117/4D of Arasanatham Village, Namakkal Taluk, Namakkal District. Originally the father of the petitioner, viz., one Chinnathambi owned property in Survey No.117/4D of Arasanatham Village Namakkal Taluk, Namakkal District to an extent of 2 acres and 12 cents and he executed a settlement deed in favour of his 2nd wife namely Packiam on 4.11.1982 and in the Settlement Deed, it was clearly stated that after the demise of the said Packiam, the said property shall go to petitioner and her sister one Sarasu. After the desertion of the said Packiam, as the entire property was occupied by her sister Sarasu, the petitioner filed a suit for partition and separate possession before the Subordinate Court, Namakkal in O.S.No.261 of 2011 and by a decree and judgment dated 3.9.2014, the petitioner was allotted 50 % share in the property and separate possession was given to her to an extent of 1 acre and 6 cents. Accordingly, the petitioner took possession of her 50% share out of the total extent of 2 acres and 12 cents in Survey No.117/4D of Arasanatham Village, Namakkal taluk, Namakkal District since 3.9.2014.

3. Whiles, the 3rd respondent viz., the President, Arasanatham Village Panchayat, Mohanur Panchayat Union is taking steps for the formation of road between Thanneer Panthal Village and Surampatti Village via Mallampalayam Hamlet for acquiring petitioner's land. On coming to know the same, she informed the 3rd respondent that her property is full of neem trees and other small trees and also expressed her non willingness to give her land for road formation. In spite of her objections, the 3rd respondent, on 17.6.2015 during night hours, removed six neem trees and several small trees in her property by using JCB vehicle and sold the same without her knowledge and consent. On 18.6.2015, when she enquired the 3rd respondent about his illegal usurping of her property and illegal removal of trees, the 3rd respondent along with his friend one Thangavel scolded herself and her husband in unparliamentary words. Therefore on 18.6.2015, she preferred a complaint to the Inspector of Police, Mohanur Police Station, but he refused to receive her complaint.

4. On 19.6.2015, she made representation to the 1st respondent viz., the District Collector, Namakkal District requesting to take action against the 3rd respondent and his friend Thangavel, who threatened herself and her husband and to render protection for their lives and also for recovery of her lands. With respect to her representation dated 19.6.2015, the Assistant Director of Rural Development(Panchayats) issued communications dated 13.7.2015 and 12.8.2015 to the 2nd respondent for taking appropriate action against the 3rd respondent and in pursuance of which, the 2nd respondent issued a communication to the 3rd respondent by his letter dated 20.11.2015 to submit a report to him with respect to the

representation dated 19.6.2015 made by the petitioner before the 1st respondent. Despite the same, as the 1st and 2nd respondents are not taking any steps on the petitioner's representation, the threatening made by the 3rd respondent on the petitioner and her husband has been continuing and the 3rd respondent is progressing on the work of road formation on her property and if the road formation is completed on her property, her entire 1 acre 6 cents of her property become useless and she will lose her livelihood. Therefore, the petitioner has filed this present Writ Petition seeking a direction to the 1st respondent to take appropriate action on the 3rd respondent based on her representation dated 19.06.2015.

5. The 3rd respondent has filed a detailed counter stating that this respondent has neither proposed to acquire the property of the petitioner in his personal capacity and he proceeded to acquire the petitioner's land as the President of Arasanatham Village Panchayat for formation of the road between Thanneerpandal Village and Surampatti Village via Mallampalayam Hamlet and it is not correct to state that the petitioner has informed this respondent that her property is full of neem trees and that she is not willing to give it for road formation. It is also not true that at night hours on 17.6.2015, this respondent removed six neem trees and several small trees in her property using JCB vehicle and sold the same without her knowledge and consent. It is incorrect to state that this respondent and his friend by name Thangavelu have scolded herself and her husband using unparliamentary words and threatened them. He is not aware of the fact that the petitioner has preferred a complaint before the Inspector of Police, Mohanur Police Station and the same was refused to be received by the police. It is true that the 2nd respondent asked this respondent to submit a report regarding the representation to him and the true facts pertaining to the road formation were reported to him. The road works is not being carried out on the property namely Survey No.117/4D of Arasanatham Village.

6. It is further stated in the counter that the road work through the land gifted had been completed and no part of the land belonging to the petitioner was usurped for the said purpose. The petitioner had filed a suit against this respondent and the other respondents making similar allegations in O.S.No.474 of 2015 on the file of District Munsif Namakkal seeking for a relief of injunction and in the said suit, her sister had filed a petition to get herself impleaded and further she had clearly stated in her petition that there is no road in the property as alleged by the petitioner. Further, the suit for partition averred in the writ petition is still pending and no decree had been passed in her favour as alleged in the petition. The petitioner has filed the present Writ

Petition suppressing the pendency of the said suit filed by her before the District Munsif Court, Namakkal seeking the same relief as interim relief in the above Writ Petition and the petitioner has approached this Court with unclean hands , thus she is not entitled for any relief as sought for in this Writ Petition and prayed for dismissal of the same.

7. I have heard the submissions made on either side and perused the materials available on record.

8. The only grievance of the petitioner is that the 3rd respondent had damaged the property of the petitioner situate in S.No.117/4D, Arasanatham Village, Namakkal Taluk, Namakkal District, subsequent to which, the petitioner made a representation before the 1st respondent to take appropriate action against the 3rd respondent.

9. According to the learned counsel for the 3rd respondent, the entire averment contained in the affidavit filed in support of the Writ Petition is false and already the petitioner has filed a Civil Suit in O.S.No.474 of 2015 before the District Munsif Court, Namakkal for the same relief as prayed for in the present Writ Petition and the same is pending till date, therefore, the Writ Petition is liable to be dismissed.

10. Irrespective of the submissions made on either side, considering the limited scope of the prayer sought for, without going into the merits of the matter, this Court directs the 1st respondent to consider the representation of the petitioner dated 19.6.2015, by affording an opportunity of personal hearing to the petitioner as well as the 3rd respondent and pass appropriate orders on merits and in accordance with law within a period of twelve weeks from the date of receipt of a copy of this order.

11. It is made clear that this Court has not expressed any opinion with regard to the merits of the claim of the petitioner and it is for the 1st respondent to pass orders on the representation of the petitioner purely on merits by considering all the factual aspects.

12. With the above direction, this Writ Petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

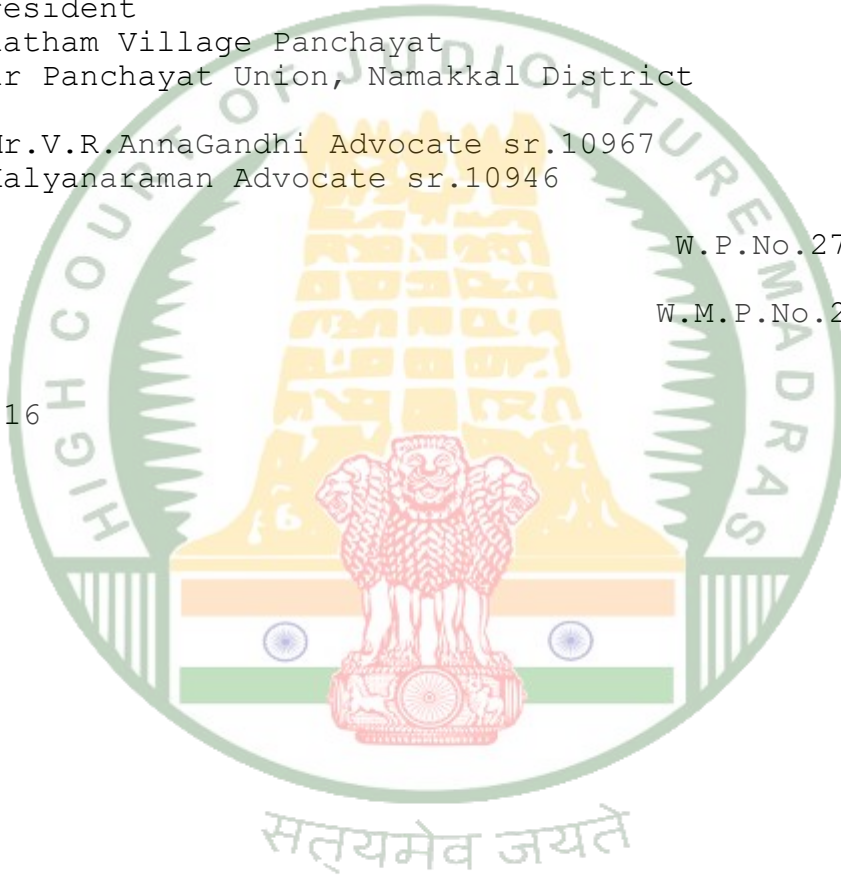
To

1. The District Collector,
Namakkal District, Namakkal
2. The Block Development Officer, (Panchayat),
Mohanur Panchayat Union,
Mohanur, Namakkal District.
3. The President
Arasanatham Village Panchayat
Mohanur Panchayat Union, Namakkal District

+1 cc to Mr.V.R.AnnaGandhi Advocate sr.10967
+1 cc to Kalyanaraman Advocate sr.10946

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