

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2016

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.35412 of 2016

S.Sivaraja

.. Petitioner

-vs-

1. The Conservator of Forests
Chennai Circle
Chennai 600 006

2. The District Forest Officer
Chengalpattu Division
Kancheepuram District

3. The Forest Range Officer
Sriperumbudur Range
Kancheepuram District

.. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the respondents to pass appropriate orders for granting regular permission for right of pathway for the petitioner to reach the patta land comprised in S.Nos.87/4, 87/6, 89/2, 94 & 97 Puduper Village, Sriperumbudur Taluk, Kancheepuram District through the existing cart track running through the forest land and further to permit electricity connection to the patta land belonging to the petitioner by laying cable through the existing cart track, within a time frame to be fixed by this Hon'ble Court.

For Petitioner :: Mr.G.Sankaran

For Respondents :: Mr.N.Inbanathan
Government Advocate (Forests)

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ORDER

The present writ petition has been filed by Mr.S.Sivaraja seeking a writ of mandamus, directing the respondents to pass appropriate orders for granting regular permission for the right of pathway for the petitioner to reach the patta land comprised in Survey Nos.87/4, 87/6, 89/2, 94 & 97 Puduper Village,

Sriperumbudur Taluk, Kancheepuram District through the existing cart track running through the forest land and further to permit electricity connection to the patta land belonging to the petitioner by laying cable through the existing cart track, within a time frame to be fixed by this Hon'ble Court.

2. Learned counsel for the petitioner submitted that when the land to an extent of 9.49 acres at Puduper village, Sriperumbudur Taluk covered in Survey Nos.87/4, 87/6, 89/2, 94 & 97 is a patta land owned by the petitioner, he had put up a residential house and also doing cultivation from the inception for the past 20 years. Since the patta land owned by the petitioner is completely surrounded by the reserve forest area belonging to the forest department on all sides, the access to his patta land is through a cart track road running in the forest land. When the ingress and egress to the petitioner's patta land through the cart track road running in the forest land belonging to the forest department to reach the other side of the land cannot be denied to the petitioner, a representation was made in the year 2002 by the petitioner's mother Tmt.S.Amirthavalliammal seeking permission to draw a cable line for electricity service connection for the purpose of cultivation and for residential purpose. A similar representation was also given to the respondents by the petitioner. But no action was taken on the same. However, on 3.5.2004, based on the representation, the District Forest Officer, Chengalpattu Division, the second respondent herein had also forwarded a proposal to the Conservator of Forests, Chennai circle, the first respondent herein in his proceedings bearing Na.Ka.No.6095/08 for the purpose of laying a cable line in the forest land along with 12 feet cart track, as permitted as per the orders of the Government. But from the date of proposal sent by the second respondent, till date, no order has been passed by the first respondent for permission, as a result the utility of the petitioner's patta land has been put to grave danger.

3. Continuing his arguments, he submitted that when the proceedings of the Board of Revenue (Land Revenue) dated 6.5.1890 also admit the public right of pathway through a cart track not exceeding twelve feet in width from Kivalur to Pudipper etc., running in the forest land to reach the private patta lands, the petitioner has been using the cart track all along to reach his land for the purpose of cultivation and residence. Therefore, the petitioner is prepared to abide by any condition that may be imposed by the respondents in this regard. Adding further, he submitted that if the respondents are of the view that the cart track and pathway are going to be misused by miscreants or anti-social elements, it is for them to work out their remedy by resorting to lawful means. When the petitioner is also prepared to give a reasonable undertaking, a direction may be given to the respondents to grant regular

permission for the usage of pathway by the petitioner to reach his patta's land comprised in Survey Nos.87/4, 87/6, 89/2, 94 & 97, he pleaded.

4. A counter affidavit has also been filed by the District Forest Officer, Chengalpattu Division. Paragraph-5 of the counter affidavit clearly admits the case of the petitioner that the petitioner can enter his patta land by using the existing right of way as per law and existing rules and by giving a proper undertaking as stated by the petitioner in paragraph-6 of the affidavit that he will ensure that the right of way will not be misused. It is relevant to extract paragraph-5 of the counter affidavit, as follows:-

"5. It is submitted that regarding the averments made in Para Nos.6 to 8, it is true that restrictions were made by forming trenches across the existing cart tracks. The restrictions were made to prevent the illegal sand quarrying in the Reserve Forest areas and to ensure the protection of the wild animals and forest wealth inside the Reserve Forest. The right of way to the land of petitioner was being misused by antisocial for illegal sand mining and poaching of wildlife from Reserve Forest areas. As per Tamil Nadu Forest Act, 1882 and Wildlife Protection Act, 1972, it is the duty of petitioner to ensure that the rights enjoyed by him because of the positioning of his land adjacent to Reserve Forest is not misused for exploiting the natural resources of forest. The petitioner can enter his patta land by using the existing right of way as per law and existing rules and by giving proper undertaking as stated by the petitioner in Para No.6 of the affidavit to the effect that he will ensure that the right of way will not be misused."

5. The learned Government Advocate for the respondents, referring to the filing of undertaking by the petitioner as stated in paragraph-6 of the affidavit, also submitted that only in order to curb the illegal felling of trees and other illegal activities that are taking place in the reserve forest, the petitioner should be directed to give an undertaking before the respondents ensuring that the rights enjoyed by him are not misused for maintaining the natural resources of the forest.

6. I have carefully considered the submissions. The petitioner is the owner of the patta land to an extent of 9.49 acres covered in Survey Nos.87/4, 87/6, 89/2, 94 & 97 at

Puduper village, Sriperumbudur Taluk. Admittedly, his patta land is surrounded by the reserve forest area belonging to the forest department on all sides. Since all of a sudden the respondents have put up restrictions for outsiders to enter into the forest land by forming trenches across the existing cart track, the petitioner and his family, being the owners of the patta land in the aforementioned survey numbers, are not able to enter into their own land. When the petitioner is the owner of the land which is situated inside the reserve forest with a cart track facilitating the pattadars of the private land to reach their land, their ingress and egress cannot be prevented. When the existence of the cart track not exceeding twelve feet in width from Kivalur to Pudipper about thirty one chains through forest field Nos.741, 750, 756, 755 and 759 of Kattarambakkam entering the forest a little to the north of the south-east corner of survey No.739, leaving about three chains north of the boundary stone at the north-east corner of survey No.753-4 both of Kattarambakkam village, is admitted, it is always open for men, cattle, carts to enter through the said cart track running through the forest land in order to reach their respective patta land and the respondents cannot legally prevent them. Although representations were given to the respondents, on 3.5.2004, the District Forest Officer, Chengalpattu Division had forwarded a proposal to the Conservator of Forests, Chennai circle in his proceedings bearing Na.Ka.No.6095/08 for laying a cable line through the forest land along with 12 feet cart track, as permitted as per the orders of the Government. Therefore, this Court, keeping in mind that the second respondent has also admitted the case of the petitioner that he can enter his patta land by using the existing right of pathway as per law and existing rules by giving a proper undertaking, hereby directs the petitioner to give the required undertaking to the respondents within a period of four weeks from the date of receipt of a copy of this order. On receipt of such undertaking, the respondents shall consider the case of the petitioner along with the proposal already submitted by the District Forest Officer, Chengalpattu division and pass appropriate orders as per law within a period of eight weeks thereafter. With this observation, the writ petition stands disposed of. Consequently, W.M.P.No.30484 of 2016 is closed. No costs.

-s/d-
Assistant Registrar

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Sub-Assistant Registrar

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To

1. The Conservator of Forests
Chennai Circle
Chennai 600 006
2. The District Forest Officer
Chengalpattu Division
Kancheepuram District
3. The Forest Range Officer
Sriperumbudur Range
Kancheepuram District

+1 cc to Mr.G.Shankaran Advocate sr 73720
+1 cc to Special Government(F) SR 73637

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