

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.5659 of 2016

N.Subbulakshmi

... Petitioner

Vs.

- 1.The District Collector /  
The District Administrative Judge,  
The Office of Collectorate, Coimbatore.
- 2.The District Revenue Officer,  
The Office of Collectorate,  
Coimbatore.
- 3.The Commissioner,  
Pollachi Municipality,  
Pollachi.
- 4.The Tahsildar,  
Taluk Office,  
Pollachi.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondents not to execute the order passed by the 1<sup>st</sup> respondent vide Na.Ka.No.1144/2015/E1, dated 12.02.2015 since the 1<sup>st</sup> respondent did not serve the copy of the order till date to the petitioner.

For Petitioner : Mr.S.Nagarajan  
For respondents : Mr.V.Jayaprakash Narayanan, Spl.GP.  
(For R1, R2 & R4).  
Mr.A.S.Thambuswamy (For R3)

ORDER

This writ petition has been filed by the petitioner, praying for issuance of a Writ of Mandamus, directing the respondents not to execute the order passed by the 1<sup>st</sup> respondent vide Na.Ka.No.1144/2015/E1, dated 12.02.2015 since the 1<sup>st</sup> respondent did not serve the copy of the order to the petitioner.

2.In the affidavit filed in support of the writ petition, it has been averred by the petitioner, inter alia, as follows:-

2-1.The property measuring to an extent of 40 sq.mt in New T.S.No.42, Ward 'D', Block 12, at Thottiyakottampatti Village, Pollachi Taluk, Tiruppur District originally belonged to one Subbathal and Maya Gounder, who are the grandmother and father of the petitioner herein respectively. After their demise, the petitioner and her mother were in possession and enjoyment of the subject property. Thereafter, the petitioner's mother Vailliammal also died on 02.12.2002. The petitioner being the only legal heir derived title to the subject property by inheritance.

2-2.It is further stated by the petitioner that a Bokkiam Deed had been executed by the petitioner's ancestors namely Subbathal and Maya Gounder, in favour of one Peraviya Gounder as early as on 16.04.1941 and the description of property relating to the subject property was well defined in the said document.

2-3.It is further stated by the petitioner that originally, there was only a house which is facing northern side, in the said property. During the year 1957, the petitioner's father had constructed a house on the northern side of the property and he had left a space in between his two houses, measuring about 35'x 10'. For the said construction, the petitioner's father Maya Gounder had applied to the Municipality and the plan for the construction of the house was approved by the 2<sup>nd</sup> respondent on 26.03.1957. In the plan, the vacant space left between the houses was recognized as belonging to the petitioner's father Maya Gounder and it was shown as open space. The petitioner's father had erected a pipe in the subject property before several decades and he also erected one more pipe.

2-4.The property situated on the western side of the petitioner's property belonged to one Mr.Kannappan. Originally, the said property belonged to one Ramasamy Gounder and after his demise, his sons had become entitled to the property, from whom the said Kannappan purchased the property in the year 1993. While purchasing the property, the said Kannappan incorporated a recital as if the open space is a way to his house. The said recital is self serving and will not bind the petitioner. Subsequently, the 4<sup>th</sup> respondent during the time of Town survey has shown the said open space as if it belongs to the Municipality. The said open space has wrongly been divided and a separate survey number has been given as T.S.No.42. According to the petitioner, the said open space measuring about 35'x 10' comprised in T.S.No.42 (subject property) to the

petitioner and the 5<sup>th</sup> respondent has no manner of right over the property. The 5<sup>th</sup> respondent has right of way through a common Municipal lane, which is situated on the southern side of the petitioner's house, which runs so as to reach his house. The said lane is clearly described in the Bookkiam Deed dated 16.04.1941.

2-5.It is the case of the petitioner that taking advantage of the wrong survey assigned by the officials, the said Kannappan is now claiming right of way in between the petitioner's properties. The petitioner permitted the said Kannappan to take the drinking water by laying underground pipeline within his property. Ultimately, taking advantage of the same, now the said Kannappan is trying to let his drainage water through the open space and also to take his two wheelers through the same. The petitioner came to know that the said Kannappan applied to the 3<sup>rd</sup> respondent for the construction of the drainage and they were taking hurried steps.

2-6.It is further stated by the petitioner that the said Kannappan approached the 1<sup>st</sup> respondent and requested to declare subject property T.S.No.42 as common pathway, which belongs to the petitioner. In fact, the subject property situated at T.S.No.42 belongs to the petitioner as she derived the same from her ancestors. On 19.03.2012, the 1<sup>st</sup> respondent passed an order vide Na.Ka.No.3245/2011/3 declaring the subject property in T.S.No.42 as public pathway, without giving any opportunity to the petitioner. Before passing the said order, the 1<sup>st</sup> respondent did not inspect the property or got the report's from subordinates or any authorities concerned. Hence, the petitioner had earlier filed a writ petition in W.P.No.7993 of 2012 and this Court by order 19.03.2012 set aside the order passed by the 1<sup>st</sup> respondent and remanded back the matter to the 1<sup>st</sup> respondent for fresh consideration. Now, the 1<sup>st</sup> respondent has passed the impugned order dated 12.02.2015 directing the respondents 2 and 3 to remove the encroachments immediately and submit a report to him. The respondents 3 & 4 are taking steps to remove the washing stones laid by the petitioner's father before several decades. The 1<sup>st</sup> respondent sent a notice for hearing on 12.02.2015. Thereafter, there was no communication from the 1<sup>st</sup> respondent and the 1<sup>st</sup> respondent did not serve certified copy of the order till date. Now, the respondents are taking steps to remove the washing stones in the subject property laid by her father several decades ago. Hence, the petitioner has come forward with the present writ petition before this Court for the relief as stated supra.

3.When the matter is taken up for consideration, the learned counsel for the petitioner made his submissions, reiterating the contention made in the affidavit filed in support of the writ petition.



4. But, the learned counsel for the 3<sup>rd</sup> respondent/Pollocahi Municipality, by filing a counter, submitted that as per the Municipal Survey records maintained by the 3<sup>rd</sup> respondent, the subject property in T.S.No.42 has been classified as Government Poromboke pathway and it belongs to the Revenue Department. It is further stated that with regard to the subject property, the petitioner has already filed a suit in O.S.No.264 of 2003 on the file of the District Munsif Court, Pollachi. But, since the petitioner did not prosecute the said suit, the said suit was dismissed for default. Thereafter, the petitioner filed an application to restore the suit, along with an application under Section 5 of the Limitation Act to condone the delay in I.A.No.123 of 2012. The said application was dismissed on 22.09.2014 by the learned District Munsif, Pollachi, against which the petitioner has filed a revision in C.R.P.No.4641 of 2014. The learned counsel for the 3<sup>rd</sup> respondent would further contend that the 1<sup>st</sup> respondent, after considering the contentions of the petitioner and Kannappan, passed an order dated 20.02.2015 confirming the earlier order dated 29.10.2009 declaring the subject property as common pathway. The learned counsel for the 3<sup>rd</sup> respondent submitted that there is no merit in the writ petition and the same is liable to be dismissed. Thus, he sought for dismissal of the writ petition.

5. I have heard the learned Special Government Pleader appearing for the other official respondents also and perused the materials available on record.

6. From a perusal of the records, I find that the 1<sup>st</sup> respondent has passed an order dated 20.02.2015 declaring the subject property as common path way. According to the petitioner, the subject property belongs to her as she inherited the same from her ancestors. Now, the official respondents are trying to remove the encroachments in the subject property. The 1<sup>st</sup> respondent had passed an order dated 12.02.2015 directing the respondents 2 & 3 to remove the encroachments in the subject property. Hence, the petitioner has filed the present writ petition seeking a direction to the respondents not to execute the order dated 12.02.2015 passed by the 1<sup>st</sup> respondent.

7. Further, it is seen that in respect of the subject property, the petitioner has already approached the civil Court by filing a suit in O.S.No.264 of 2003 on the file of the District Munsif Court, Pollachi. But, since the petitioner did not prosecute the said suit, the said suit was dismissed for default. Thereafter, the petitioner filed an application to restore the suit, along with an application under Section 5 of the Limitation Act to condone the delay in I.A.No.123 of 2012. The said application was dismissed on 22.09.2014 by the learned District Munsif, Pollachi, against which the petitioner has

filed a revision in C.R.P.No.4641 of 2014 and the same is pending. Since the petitioner has already approached civil Court, this Court cannot entertain the prayer sought for by the petitioner in this writ petition. Moreover, there is disputed question of fact involved in this case. Therefore, the present writ petition is not maintainable because this Court could not conduct any roving enquiry with regard to the disputed question of fact, while exercising power under Article 226 of the Constitution of India. Hence, the present writ petition is liable to be dismissed.

Accordingly, the writ petition is dismissed. No costs.  
ssv

-s/d-  
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

- 1.The District Collector,  
The Office of Collectorate, Coimbatore.
- 2.The District Revenue Officer,  
The Office of Collectorate,  
Coimbatore.
- 3.The Commissioner,  
Pollachi Municipality,  
Pollachi.
- 4.The Tahsildar,  
Taluk Office,  
Pollachi.

+ 1 cc to M/s.A.S.Thambusamy, Advocate SR 25488

+ 1 cc to Mr.S.Nagarajan, Advocate SR 25551

ppa(co)  
prk31/5

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