

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved On : 25.04.2016

Pronounced On: 28.04.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.9460 of 2016

and

W.M.P.Nos.8433 & 8434 of 2016

Mr.M.Ranganathan

... Petitioner

Vs.

1.The District Collector,
Dharmapuri, Dharmapuri District.

2.The Superintendent of Police,
Dharmapuri, Dharmapuri District.

3.The Inspector of Police,
Palacode, Dharmapuri District.

4.The Tahsildar,
Palacode, Dharmapuri District.

5.The Director of Town Panchayats,
Kuralagam, Chennai-600 104.

6.The Asst Director of Town Panchayats,
Dharmapuri, Dharmapuri District.

7.The Executive Officer Town Panchayat,
Palacode, Dharmapuri District.

8.Mr.K.V.Ranganathan,

9.Mr.P.V.Periyasami

10.Mrs.Palaniyammal

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the Respondent No.7, the Executive Officer, Palacode, to remove the stones put in S.No.943/69, Palacode a public road and the Iron Gate put up in S.No.933/1A3A, Palacode, permanently.

For Petitioner : Mr.P.Ravi Kumar

For respondents : Mr.P.Rajalakshmi, GA (For R1 to R7)
Mr.R.Margabandhu (For R9 to R10)

: No Appearance

ORDER

This writ petition has been filed by the petitioner, praying for issuance of a Writ of Mandamus, to direct the 7th respondent herein viz., the Executive Officer, Palacode, to remove the stones put up in S.No.943/69, a public road, and the Iron Gate put up in S.No.933/1A3A, Palacode, permanently.

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

2-1.Originally the property measuring 61 X 57 feet (3477 sq.ft) was purchased in the name of the petitioner's mother Mrs.Rajammal on 15.08.1945 vide Doc.No.1190/1945 on the file of the Sub-Registrar Office, Palacode, Dharmapuri District in S.No.934/1B (Old S.No.934/1B) in Palacode Village. In the said land, a house was constructed by the petitioner's parents in the year 1945 itself and ever since, the said property has been in the peaceful possession and enjoyment of the petitioner's family members.

2-2.Similarly, the property measuring 106 X 98 feet (10833 sq.ft) in S.No.933/1A was purchased in the names of one Mrs.Kanniyammal and Perumal Ammal as per Doc.No.1190, dated 09.11.1944, on the file of the Sub-Registrar Office, Palacode, Dharmapuri District. Both the lands are lying opposite to each other. A house was also constructed in that site by the buyers. The sellers of both the sites are one and the same. The sellers, while selling the lands to the petitioner's mother, had clearly left necessary pathway for usage, in the seller's own land which is in between the two sites. This fact has been clearly mentioned in the sale deed vide Doc.No.1190/1945. The said pathway has been in use for the past 70 years and it has been used by the general public all these years. The said road has been taken over by the Town Panchayat, Palacode for maintenance long time back.

2-3.The Government of Tamil Nadu, during the year 1989, under a special scheme, newly sub-divided the original S.No.934/1B as S.No.934/68 for an extent of 3.40 hec and issued patta in favour of the petitioner's mother vide Patta No.2108, and the pathway between the said two sites was sub-divided as S.No.934/69 and classified as Vzhi (pathway).

2-4.The petitioner and his three brothers are the legal heirs of their mother Mrs.Rajammal. They are the senior citizens and retired Government servants. Since their house was in a dilapidated condition, after retirement, they started to construct houses in their site after demolishing the old house in their respective portions with their hard earned money. Since there were so many obstacles from the respondents 8 to 10 herein, the petitioner and his brothers lodged protests before the official respondents and

representations were also given to the official respondents by the petitioners and his brothers. On 16.04.2015, during the construction of the petitioner's house, the 10th respondent locked the iron gate which was illegally put up by the respondents 8 to 10 on the panchayat road, thereby prevented the general public and the petitioner from using the said road. The iron gate has been put up by the respondents 8 to 10, violating the panchayat rules. The petitioner made a telephonic complaint to the local police station and explained the matter. Thereafter, two Sub-Inspectors of Police came to the spot and opened the locks of the iron gate and relieved the petitioner and others. The Police also warned the 10th respondent not to do such things in future. The petitioner had requested the Police officers to initiate action as per law. Since no action was taken by the Police, on 20.04.2015 the petitioner made a complaint to the 2nd respondent, who instructed the 3rd respondent over phone to initiate criminal action for unlawful restraint committed by the 10th respondent. But, thereafter, no action was taken by the official respondents.

2-5. It is further stated by the petitioner that during the construction of their house in the month of July, 2015, the respondents 9 & 10 obstructed the pathway by putting large stones in the middle of the panchayat road in front of their houses in S.No.934/69. In this regard, the petitioner has also sent a complaint to the respondents 2 & 3. According to the petitioner, the said panchayat road has been under utilization of the public for more than 70 years as a public road and in fact, the said road has been declared by the Town Panchayat as public road. By locking the Iron gate and by putting stones in the middle of the panchayat road, the respondents 8 to 10 have taken law in their own hands. As there was no response on the complaint lodged by the petitioner, the petitioner preferred a petition to the 4th respondent viz., The Tahsildar and Executive Magistrate, Palacode, to take action. The 4th respondent sent a Deputy Tahsildar, Surveyor and VAO for inspection and report on the petition given by the petitioner. Thereafter, the said officials inspected the spot and submitted their report. Then, the 4th respondent called for an inquiry on 15.10.2015. The respondents 8 & 9, the petitioner and the respondent No.7, who is the Executive Officer, Town Panchayat, and VAO were called for inquiry. During inquiry, the Executive Officer in his letter Na.Ka.No.542/2015 dated 12.10.2015 submitted a detailed report about the road.

2-6. It is further stated by the petitioner that the 7th respondent viz. The Executive Officer has given a report stating that cement road was laid by the Town Panchayat and it was the property vested with the town panchayat; that the street light has been provided to the street and maintenance of the road was done by the panchayat; that no one has the right to obstruct the pathway of the panchayat.

Further, as per Section 180(A) of the District Municipalities Act, 1920, the owners of the land extinguishes their rights over the land, if it had been taken over by the Panchayat and declared as public road. In spite of the fact that the subject road is a panchayat road, the respondents 8 to 10 are preventing the petitioner and the general public from using the said road, by putting up the iron gate and stones in the said road. Hence, the petitioner has come forward with the present writ petition before this Court for the relief as stated supra.

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

4. The learned Government Advocate appearing for the official respondents, by filing a counter, submitted that as stated by the petitioner, the subject road is vested with the panchayat; that in fact, the Tahsildar has passed an order on 09.11.2015, directing the Executive Officer, Town Panchayat, Palacode to remove the stones with proper police protection. Accordingly, on 09.12.2015, the Executive Officer went to the spot along with the Police officers, to remove the stones illegally put up by the respondents 8 to 10; however, on that day, the stones could not be removed. Thereafter, the Executive officer sent a notice dated 18.12.2015 to the 9th respondent asking to remove the stones within three days from the date of receipt of the notice. It is further stated by the learned Government Advocate that the Assistant Director of Town Panchayats, has also instructed the Executive Officer by his letter dated 27.01.2016 to inspect the spot and to take action as per law. Pursuant to the same, again the 7th respondent sent notice to the 9th respondent to remove the stones. Thus, the learned Government Advocate submitted that the 7th respondent is taking necessary steps to remove the stones from the panchayat road.

5. But, the learned counsel for the respondents 8 to 10 submitted that it is incorrect to state that the subject road belong to the panchayat; it belongs to them; therefore, they have put up the gate to prevent the others from using their land. Thus, the learned counsel for the respondents 8 to 10, sought for dismissal of the writ petition.

6. Heard both sides and perused the materials available on record.

7. From a perusal of the records, I find that after inspecting the land, the Executive Officer, Palacode has come to the conclusion that the land was vested with the panchayat. As per Section 180(A) of the District Municipalities Act, 1920, the owner of the land extinguishes his rights over the land, if it had been taken over by the Panchayat and declared

as public road. In fact, from the counter filed by the official respondents, it seen that the official respondents are taking steps to remove the stone and the iron gate put up in the panchayat road, which were put up by the respondents 8 to 10 preventing the public from using the said road. The learned counsel for the private respondents 8 to 10 submitted that it is a private land. If it is so, they ought to have approached the civil Court to declare their right over the subject road. So far, the private respondents have not approached the civil Court. On the other hand, in the enquiry conducted by the Official respondents, the official respondents have come to the conclusion that it is a panchayat road. In the absence of any order from the Civil Court declaring the right of the private respondents over the subject road, the private respondents cannot prevent the others/public from using the said road. Under such circumstances, I am of the opinion that appropriate direction could be given to the official respondents to remove the iron gate and the stones put up by the private respondent in the panchayat road.

8. Accordingly, the writ petition is allowed, with a direction to the 7th respondent to remove the iron gate and stones put up by the respondents 8 to 10 in the panchayat road, with the help of the police protection, within a period of four weeks from the date of receipt of copy of this order. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar (VI)

//True Copy//

Sub Assistant Registrar

[ssv]

To

1. The District Collector,
Dharmapuri, Dharmapuri District.
2. The Superintendent of Police,
Dharmapuri, Dharmapuri District.
3. The Inspector of Police,
Palacode, Dharmapuri District.
4. The Tahsildar,
Palacode, Dharmapuri District.

5.The Director of Town Panchayats,
Kuralagam, Chennai-600 104.

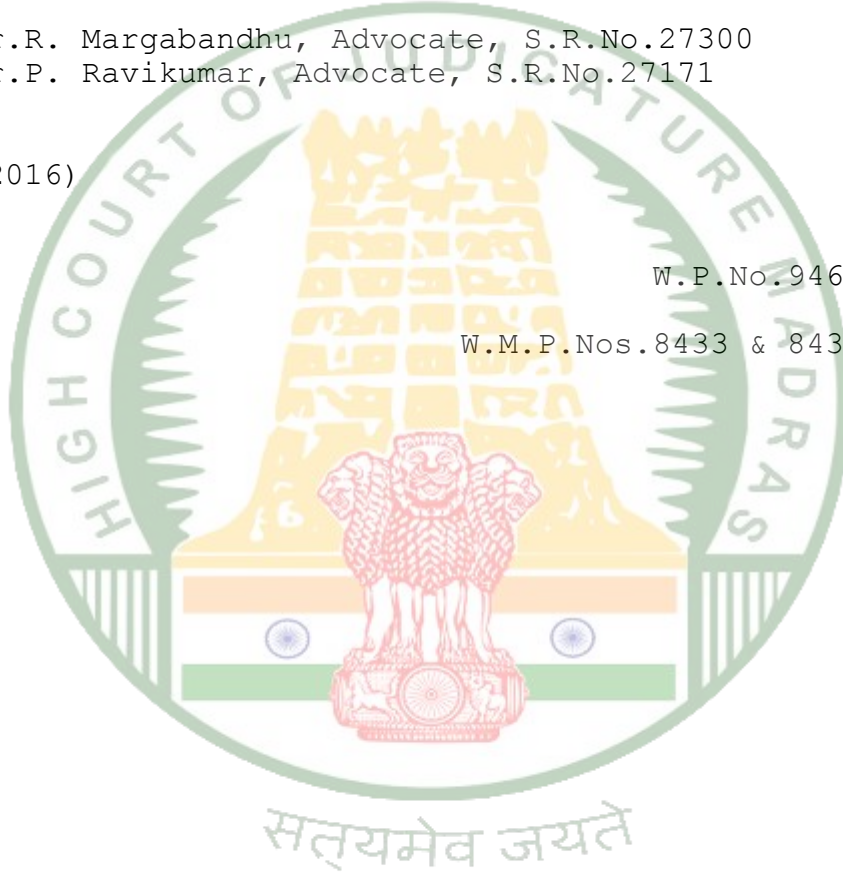
6.The Asst Director of Town Panchayats,
Dharmapuri, Dharmapuri District.

7.The Executive Officer Town Panchayat,
Palacode, Dharmapuri District.

+lcc to Mr.R. Margabandhu, Advocate, S.R.No.27300
+lcc to Mr.P. Ravikumar, Advocate, S.R.No.27171

LRS (CO)
EU(05/05/2016)

W.P.No.9460 of 2016
and
W.M.P.Nos.8433 & 8434 of 2016



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