



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.(MD) No.16667 of 2013
and
M.P.(MD) Nos.1, 2 & 3 of 2013
and
W.M.P.(MD) No.11848 of 2016

G.Kanagaraj

... Petitioner

-vs-

1.The Executive Magistrate & Thasildhar
Thottium Taluk, Trichy District

2.The Revenue Inspector
Kattuputhur Part
Thottium Taluk
Trichy District

3.A.Durairaj

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of writ of certiorari calling for the records relating to the impugned order of the first respondent in Na.Ka.A1-5598-2013, dated 20.09.2013 and quash the same.

For Petitioner : Mr.K.Esakki

For Respondents : Mr.R.Karthikeyan, A.G.P., for R1 & R2
Mr.C.Meenakshiram Prabhu for R3

O R D E R

[Order of the Court was made by M.SATHYANARAYANAN, J.]

With the consent of both sides, this writ petition is taken up for final hearing.

<https://hcservices.ecourts.gov.in/hcservices/>

2. On 08.10.2013, while entertaining the writ petition, this



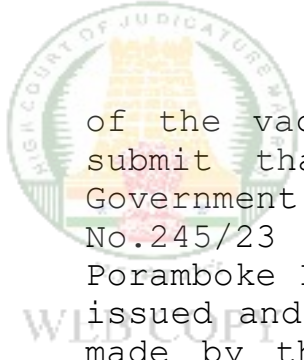
Court has granted an order of interim stay and it has been extended periodically.

3. The petitioner claims that he is the owner of the land and building situated in Old Natham Survey No.32, purchased by him under a Sale Deed, dated 14.09.2005 and he is in peaceful possession and enjoyment of the said property. According to him, there is east-west lane lies on the western side of the said property and the same is also in his possession. Since the building situated in the said property was in a dilapidated condition, he started construction work in a portion of the said property adjoining the north-south main road. In such circumstances, the third respondent, who is the adjacent land owner of the eastern side of the property, objected to the right of the petitioner over the said lane and in this regard the petitioner filed a suit in O.S.No.61 of 2007, on the file of the Court of District Munsif, Musiri, praying for permanent injunction restraining the third respondent and his men from interfering with his peaceful possession and enjoyment of the said lane.

4. The petitioner would further submit that the third respondent has no right whatsoever over the said east-west lane and there is north-south lane on the northern side, which connects the east-west main road running on the northern side and the third respondent is using the said lane for having access to the main road. He would further submit that the third respondent along with one Raju @ Rasa Kandar filed a suit against the petitioner, in O.S.No.217 of 2009, on the file of the Court of District Munsif, Musiri, for permanent injunction restraining him from interfering with their right to use the disputed lane and they obtained *ex parte* interim injunction in I.A.No.649 of 2009. Subsequently, the petitioner entered appearance and filed a counter affidavit in the said interlocutory application and the said application was heard and it was dismissed on merits, by order dated 04.07.2011 and no appeal has been filed challenging the same. However, without taking note of these facts and circumstances, the first respondent issued the impugned notice, dated 20.09.2013, for removal of the alleged encroachment made by the petitioner over the said lane and challenging the legality of the same, the petitioner has filed this writ petition.

5. Mr.K.Esakki, learned counsel representing Mr.H.Arumugam, learned counsel on record for the petitioner, would submit that since the matter in issue had been ceased by the Civil Court, the impugned notice issued by the first respondent is unsustainable in law and hence he prays for interference of this Court.

6. Mr.R.Karthikeyan, learned Additional Government Pleader appearing for the respondents 1 and 2, invited the attention of this Court to the counter affidavit / affidavit filed in support



of the vacate stay petition in M.P.(MD) No.3 of 2013 and would submit that the first respondent had verified the available Government records and ascertained that the lane in Survey No.245/23 has been specifically classified as 'Government Poramboke Lane' and thereafter only the impugned notice came to be issued and subsequently with the help of Police, the encroachment made by the petitioner has been removed on 24.09.2013 at about 12.00 noon and further the petitioner is also very well aware the removal of the unauthorized construction put up by him earlier in Survey No.245/23 and hence the writ petition lacks merits and prays for dismissal of the writ petition.

7. Mr.C.Meenakshi Ram Prabhu, learned counsel appearing for the third respondent, invited the attention of this Court to the counter affidavit and submitted that the suit filed by the petitioner in O.S.No.61 of 2007 and the suit filed by the third respondent and another in O.S.No.217 of 2009 were taken up together by the Trial Court for disposal and by a common Judgment and decree, dated 20.02.2014, the suit filed by the petitioner was dismissed and the suit filed by the third respondent and another was decreed and in the said common Judgment and decree, a specific finding was given to the effect that the said lane is a common lane and so far no appeal has been preferred by the petitioner against the said common Judgment and decree, dated 20.02.2014, and therefore, the nature of classification of the said lane has become final and hence prays for dismissal of the writ petition.

8. This Court has carefully considered the rival submissions and perused the materials produced.

9. In the light of dismissal of the suit in O.S.No.61 of 2007 filed by the petitioner for permanent injunction and decretal of the suit in O.S.No. O.S.No.217 of 2009 filed by the third respondent and another for permanent injunction and the findings given by the Trial Court to the effect that the disputed lane is a common lane, this Court of the considered view that the contentions put forth by the learned counsel for the petitioner lack merits. Admittedly, as against the common Judgment and decree, dated 20.02.2014, passed in O.S.Nos.61 of 2007 and 217 of 2009, no appeal has been preferred and therefore the nature of classification of the lane has become final.

10. The learned counsel for the petitioner filed a memo, dated 08.09.2016, stating that the petitioner preferred appeals in A.S.Nos.133 and 134 of 2015, on the file of the II Additional Sub Court, Tiruchirappalli, challenging the legality of the common Judgment and decree, dated 20.02.2014, passed by the District Munsif, Musiri, and the same are stated to be pending. The said memo is recorded. However, in the light of the reasons assigned above, this writ petition deserves for dismissal.



11. In the result, the writ petition is dismissed and the interim orders already granted by this Court stand vacated. Consequently, connected miscellaneous petitions are closed. In the facts and circumstances, there is no order as to costs.

WEB COPY

Sd/
Assistant Registrar (Records)

/True Copy/

Sub Assistant Registrar

To:

1.The Executive Magistrate & Thasildhar,
Thottium Taluk, Trichy District.

2.The Revenue Inspector,
Kattuputhur Part,
Thottium Taluk,
Trichy District.

+1 cc to MR.H.ARUMUGAM, Advocate Sr.NO.50844

+1 cc to M/S.C.MEENAKSHI RAMA PRABU, Advocate SR.NO.50702

+1 cc to Special Government Pleader SR.No.50943

W.P. (MD) No.16667 of 2013
and
M.P. (MD) Nos.1, 2 & 3 of 2013
and
W.M.P. (MD) No.11848 of 2016
07.09.2016

krk

GJM/PV/SAR-I/16/09/2016:4P/6c