

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.08.2018

Coram:

THE HON'BLE MR.JUSTICE M.VENUGOPAL
AND
THE HON'BLE MRS.JUSTICE S.RAMATHILAGAM

W.P.No.9224 of 2018
and
W.M.P.No.11045 of 2018

Amirdhavalli

... Petitioner

vs.

- 1.Union Territory of Puducherry
rep.by the Chief Secretary to Government,
Government of Puducherry,
Secretariat,
Puducherry.
- 2.The Secretary to
Her Excellency Lt.Governor,
Rajnivas,
Puducherry.
- 3.The Secretary to Government,
Local Administration, Town & Country
Planning and Housing,
Government of Puducherry,
Secretariat,
Puducherry.
- 4.The Secretary to Government (Revenue)
Government of Puducherry,
Secretariat,
Puducherry.
- 5.The District Collector cum Special
Secretary (Revenue),
Government of Puducherry,
Secretariat,
Puducherry.

6.The Director of Survey and Land Records,
Directorate of Survey and Land Records,
Government of Puducherry,
Puducherry.

7.The Commissioner,
Bahour Commune Panchayat,
Bahour,
Puducherry.

8.The Deputy Collector (Revenue) (south),
Government of Puducherry,
Villianur,
Puducherry.

9.The Tahsildar,
Taluk Office,
Bahour,
Puducherry.

10.The Deputy Tahsildar,
Taluk Office,
Bahour,
Puducherry.

11.P.Kannappan

12.Radhika

13.R.Sivapragasam

Respondents

...

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, directing the Respondents calling for the records relating to the impugned Assignment FORM-19, M.V.P.No.9/2008, dated 26.09.2008, granted by the 6th respondent in favour of the respondent Nos.11 and 12 for the land measuring to an extent of 0.00.30 Hectares Or 30 square meters situated at Seliamedu Revenue Village, Bahour Commune, Puducherry and set aside the same and consequently direct the Respondent Nos.1 to 10 to remove the encroachment put up by the respondent Nos.11 to 13 in common pathway bearing R.S.No.184/54, Seliamedu Revenue Village, Bahour Commune, Puducherry and thereby enabling the Petitioner and other General Public can use the land as 'Common Pathway' without any hindrance.

For Petitioner : Mr.Prakash Adiapadam

For Respondents : Mrs.V.Usha,A.G.P.

For R1 to R10

Mr.Gnanasekaran

for R11 to R13

ORDER

(Order of the Court was made by M.VENUGOPAL,J.)

Heard both sides.

2.No counter is filed on behalf of R11 to R13.

3.According to the Petitioner, she is the legally wedded wife of one Munian, son of Mayakrishnan and blessed with two children, viz., (i) Kishore & (ii) Keerthana. She is residing in the house situated in R.S.No.184/62, Door No.20, Villianur Main Road, Kudiyiruppupalayam, Seliamedu Revenue Village, Bahour Commune, Puducherry. As a matter of fact, the place in which she is residing is her matrimonial house, in which her husband and his ancestors were residing and enjoying the possession of land for generations together.

4.The version of the Petitioner is that as per Revenue Records, the whole area comprised in R.S.No.184, including the land where her house is situated, is originally classified as 'Government Poramboke'. By taking into account their long and continuous possession in respect of the land in R.S.No.184/62, in exercise of the power conferred under Puducherry Land Grant Rules, 1975, r/w G.O.(Land Survey) Ms.5, dated 09.04.1976, issued by the Directorate of Land and Survey Records, Government of Puducherry, the Hon'ble Lieutenant of Governor, Government of Puducherry, has granted Assignment for free House Patta (referred as LGR Patta) in respect of the land comprised in R.S.No.184/62, Door No.20, Villianur Main Road, Kudiyiruppupalayam, Seliamedu Revenue Village, Bahour Commune, Puducherry in FORM-19, under 60(ii) of Puducherry Land Grant Rules, 1975, in her favour, on 19.12.2007, measuring an extent of 0.01.08 Hectare.

5.At this stage, the Learned Counsel for the Petitioner submits that the boundaries for the Petitioner's land are East by R.S.No.184/55; North by R.S.No.184/54; South by R.S.No.184/67 and West by R.S.No.184/3 and that apart, the Eastern portion of the Petitioner's house fall in R.S.No.184/55, which is allotted to one Muthaiyah Padayachi, way back on 31.12.1981 and that the Northern portion of her house falls in R.S.No.184/54, which is 'Common Pathway' to her house as well as 'Common Pathway' to Chettikulam (Pond), the Southern portion of her house falls in R.S.No.184/67, which is in occupation of one Narayanan, son of Mayakrishnan and Western portion of her house falls in R.S.No.184/3, which is Chettikulam (Pond).

6.The grievance of the Petitioner is that she has no access for reaching her house except the aforestated 'Common Pathway' in R.S.No.184/54, Seliamedu Revenue Village, Bahour Commune, Puducherry. Further the stand of the Petitioner is that in the year 1987, some persons made an endeavour to encroach upon the aforestated 'Common Pathway' comprised in R.S.No.184/54, Seliamedu Revenue Village, Bahour Commune, Puducherry. Hence, on 22.12.1987, the brother of the Petitioner's Father-in-Law, viz., M.Deivanayagam, son of Muthaiyah Padayachi, submitted a written complaint before the 6th Respondent/Director of Survey and Land Records, Directorate of Survey and Land Records, Government of Puducherry, whereby a request was made to take appropriate action as regards the removal of encroachment. Accordingly, the Assistant Director of Survey and Land Records, Directorate of Survey and Land Records, Government of Puducherry, inspected the place and found that some encroachment was made and therefore, booked an 'Encroachment Complaint'. Apart from that, the Assistant Director of Survey and Land Records, Directorate of Survey and Land Records, Government of Puducherry, sent a communication, dated 17.11.1988, to the Commissioner, Bahour Commune Panchayat, Bahour, Puducherry (who is none other than 7th Respondent), whereby a direction was issued to him to take further action for removal of encroachment. Hence, the 7th Respondent had removed the encroachments made by the encroachers in the said 'Common Pathway' in R.S.No.184/54, Seliamedu Revenue Village, Bahour Commune, Puducherry and reported compliance to the Assistant Director of Survey and Land Records, Directorate of Survey and Land Records, Government of Puducherry.

7.Proceeding further, the Learned Counsel for the Petitioner brings it to the notice of this Court that during March 2017, the 13th Respondent-R.Sivapragasam, an 'Assignment Holder' of the land in R.S.No.184/69, Seliamedu Revenue Village, Bahour Commune, Puducherry, along with his henchmen, had commenced foundation work in the aforestated 'Common Pathway' in R.S.No.184/54, Seliamedu Revenue Village, Bahour Commune, Puducherry, for constructing a house by blocking the said 'Common Pathway'. Moreover, when the Petitioner questioned the 13th Respondent about the obstruction, the 13th Respondent had informed that the Director of Survey and Land Records, Directorate of Land and Survey Records, Government of Puducherry, had granted Assignment in favour of the Respondent Nos.11 and 12 in respect of the land comprised in R.S.No.184/54, Seliamedu Revenue Village, Bahour Commune, Puducherry and he further informed that they had jointly sold the said land to him by hand sale.

8.It is represented on behalf of the Petitioner that the Petitioner made numerous complaints to various authorities from 17.3.2017 to 05.05.2017, whereby, a request was made to the 'concerned Authorities' to look into the matter and to take appropriate action for 'Removal of Encroachment'. On receipt of complaint dated 17.3.2017, the 7th Respondent/The Commissioner, Bahour Commune Panchayat, Bahour, Puducherry, forwarded the Petitioner's complaint to the 9th Respondent/The Tahsildar, Taluk Office, Bahour, Puducherry, and a request was made to depute one Surveyor to conduct field survey and furnish Report in this regard. Inasmuch as no action was taken in the subject matter in issue, the 7th Respondent, on 10.04.2017, had sent reminder to the 9th Respondent and despite the receipt of such reminder, there was no action.

9.The Learned Counsel for the Petitioner proceeds to point out that on 10.08.2017, on behalf of the Petitioner, one M.Murugasamy (brother of Petitioner's husband) projected an Application under Right to Information Act before the Public Information Officer, Directorate of Survey and Land Records, Government of Puducherry, wherein, he sought for a copy of the Assignment granted in favour of the Respondents 11 and 12 in respect of the land in R.S.No.184/54, Seliamedu Revenue Village, Bahour Commune, Puducherry. In this connection the Public Information Officer, Directorate of Survey and Land Records, Government of Puducherry, by way of response, furnished a copy of Assignment granted in favour of Respondents 11 and 12, for the land comprised in R.S.No.184/54, Seliamedu Revenue Village, Bahour Commune, Puducherry. On seeing such Assignment, the Petitioner was shocked and surprised because of the reason that on 26.09.2008 itself, the 6th Respondent/The director of Survey and Land Records, Directorate of Survey and Land Records, Puducherry, had granted Assignment in favour of the Respondents 11 and 12, vide Assignment FORM-19, M.V.P.No.9/2008, dated 16.09.2008, for the land comprised in R.S.No.184/54, Seliamedu Revenue Village, Bahour Commune, Puducherry, which is a 'Common Pathway' for reaching the Chettikulam (Pond) as well as 'Common Pathway' for reaching the Petitioner's house.

10.The Learned Counsel for the Petitioner contends that the Petitioner submitted a detailed Representation on 19.09.2017, addressed to all the Official Respondents, whereby a request was made to the Concerned Authority to recall/revoke/cancel the impugned Assignment dated 26.09.2008, granted by the 6th Respondent to and in favour of Respondents 11 and 12, in respect of the land measuring an extent of 0.00.30 Hectares or 30 square metre, situated at Seliamedu Revenue Village, Bahour Commune, Puducherry. Further, she had prayed

for removal of the encroachment put up by the Respondents 11 to 13 in 'Common Pathway' in R.S.No.184/54, Seliamedu Revenue Village, Bahour Commune, Puducherry, so that General Public, (including herself), can utilise the land in question, as 'Common Pathway', without any disturbance. The Representation of the Petitioner is kept pending. Hence, the petitioner has approached this Court by filing the present Writ Petition.

11.Per contra, it is the submission of the Learned Government Advocate for the Official Respondents that the property situated in R.S.No.184/54, Seliamedu Revenue Village, Bahour Commune, Puducherry, was a 'Common Pathway' at any point. Further, the whole property in R.S.No.184, in the aforesaid Revenue Village was a 'Government Poramboke', comprising a Pond, as entered in the Revenue Records. Over a period of time, there were encroachments on the banks of the Pond, later, the Government had proposed to grant Patta, by way of Assignment to the persons, who are in possession of the Encroachment portions, by invoking the provisions of the Pondicherry Land Grant Rules, 1975. In fact, the Petitioner is also one such 'Assignee'.

12.The Learned Government Advocate for the Official Respondents points out that the original Pond in R.S.No.184 (now falling in R.S.No.184/3) is not being utilised by any one for any purpose, since it has almost dried up and that all the portions of the land in R.S.No.184, surrounding R.S.No.184/3 were Assigned to different persons under the Pondicherry Land Grant Rules, 1975 and the Assignees are in possession and enjoyment of the portions allotted to them. Moreover, the Assignments were made in terms of the area occupied by the Assignees and in short, they do not pertain to uniform extents in R.S.No.184. Apart from that, it is the submission of the Learned Government Advocate for the official Respondents that the land in R.S.No.184/54 was never treated as a 'Common Pathway', as there was no necessity for such a Pathway, because of the reason that the whole R.S.No.184 was 'Government Poramboke Land'. Indeed, the portion in R.S.No.184/54, was possessed and enjoyed by the Respondents 11 and 12 (who are husband and wife) and they were granted an 'Assignment' for the portion under their occupation for Market Value, as per Assignment FORM-19, M.V.P.No.9/2008, dated 26.09.2008.

13.The Learned Government Advocate for the Official Respondents submits that the Petitioner is using the Southern Portion of R.S.No.184/55, the land in R.S.No.184/67 as access right from the date of the Assignment in their favour, dated 19.12.2007. Besides this, even though the Petitioner claims that R.S.No.184/55 was granted to Muthaiyah Padayatchi, it actually stands assigned to one Ramachandran, son of Muthaiyah Padayatchi. The said Ramachandran, being the Assignee of the

land in R.S.No.184/55, had direct access to the Road on the Eastern Side and under these circumstances there was no necessity for any 'Common Pathway' on the Northern side in R.S.No.184/54.

14.Added further, the Learned Government Advocate for the Official Respondents submits that the Assignees of R.S.No.184/62 and 184/55 both pertain to Muthaiyah Padayatchi, are utilising the Southern portions of their lands, which is remaining vacant, as 'Pathway'. In short, the land in R.S.No.184/67 is vacant and unassigned one, through which, the Petitioner has an access to Chetty Street. There is no estoppel for assigning the land in R.S.No.184/54.

15.The Learned Government Advocate for the Official Respondents comes out with a plea that during March 2017, the 13th Respondent commenced foundation work in R.S.No.184/54 as averred by the Petitioner. In fact, the Assignee of R.S.No.184/69 is one Ramkumar, Son of Sivapragasam and not Sivapragasam, as claimed by the Petitioner. Ramkumar's father Sivapragasam was Assigned the land in R.S.No.184/49 on the Eastern side of Ramkumar's R.S.No.184/49. Further to the East of R.S.No.184/49, Sivaprakasam's father Ranganathan was Assigned a land in R.S.No.184/48 and to the South of R.S.No.184/49 and R.S.No.184/48, the land in R.S.No.184/54 was Assigned to the 11th Respondent, who is another son of Ranganathan.

16.The substratum of the plea made on behalf of the Official Respondents is that all the lands in R.S.Nos.184/48, 184/49, 184/54 and 184/69 were Assigned as MVPS, i.e. Market Value on 'as-is-where-is' basis, within Regularisation category. Further, the Officials Respondents had denied that R.S.No.184/54 is a 'Common Pathway' for reaching the Pond and for reaching the Petitioner's house. Further it is denied that the Petitioner had no access to reach her house except through R.S.No.184/54.

17.At the risk of repetition, it is pointed out on behalf of the Respondents that the Petitioner is using the land in R.S.No.184/67 and the Southern portion of R.S.No.184/62 and R.S.No.184/55 as access to her house, facing East.

18.The Learned Government Advocate for the Official Respondents submits that on enquiry, it came to light that the Respondents 11 and 12 had constructed a house and they are residing in R.S.No.184/54, for the past nearly 20 years and further, Electricity Service Connection was given for R.S.No.184/54, about 20 years back and at present, the Service Connection appears to have been disconnected, because of the construction work. Also that, the Petitioner has no authority

or right to espouse the right of General Public, in the present Writ Petition. In fact, the Petitioner, who has knowledge about the occupation of R.S.No.184/54, by the 11th and 12th Respondents, had suppressed the said knowledge and the present Writ Petition, filed by her, is an abuse of process and the Writ Petition is liable to be dismissed.

19.By way of reply, the Learned Counsel for the Petitioner places heavy reliance on the Letter/Communication of the Assistant Director of Survey, Directorate of Survey and Land Records, Government of Puducherry, dated 17.11.1980, addressed to the Commissioner, Bahour Commune Panchayat, Bahour (7th Respondent) in respect of the encroachment in R.S.No.184/54 and in the said Letter, one M.Deivanayagam, son of Muthaiya Padayachi, Puducherry State, was informed that the 'Common Pathway' bearing R.S.No.184/54 of Seliamedu Village, was inspected and the encroachment booked thereupon etc.

20.The Learned Counsel for the Petitioner refers to M.V.P.No.9 of 2008, Form No.19, Patta issued as per Proceedings of the Directorate of Survey and Land Records, vide No.2845/DOS/ST-II/DT-2/R1-6/2008, which points out that the Application of R11 and R12 for House site in 74 Seliamedu Revenue Village, Bahour Taluk, Puducherry, was accepted and the Plot of land measuring an extent of 0.00.30 Hectares or 30 square metres, situated in R.S.No.184/54 of 74 Seliamedu Revenue Village, which stated four boundaries, was assigned to them under the Provisions of the Puducherry Land Grant Rules, 1975, of course, subject to the condition Nos.1 to 11 laid down therein. Also that, the Learned Counsel for the Petitioner refers to the Clauses 7 and 9 of the aforesaid Form of Order of Assignment of house site to R11 and R12 in respect of the land assigned to them, which read as under:-

"5.That the existing and customary rights of Government and the public in roads and paths and rivers, streams and channels running through or bounding the land are reserved and or in no way affected by the grant and that the right of Government shall be reserved to all gold and other minerals or coal and stone or rock containing or supposed to contain gold and other minerals or coal and the assignee shall not be liberty to work the said gold or other minerals or coal except on permission or license duly obtained from Government. Government also reserves to themselves or to person authorised by them the powers necessary for the proper working of the minerals such as the full and free liberty and right of ingress, egress and regress etc.

7. That the assignment or house made is heritable but not alienable. This prohibition does not, however, apply to the hypothecation of the site (together with any buildings erected on it) to Government under the Land Improvements and Agriculturists, Loans Acts or to a Co-operative Society or to a Scheduled Bank.

9.(i) any transfer made in contravention of condition (7) shall be void and the site so transferred shall vest in Government free from all encumbrance from the date of such transfer and no claim from the transferee shall lie as against Government in respect of such house site or for any improvement made to it or for any buildings constructed on it.

(ii) The house site with or without superstructure so vested in the Government shall be allotted by the Deputy Collector to the persons eligible under these rules.

(iii) In the event of the death of the assignee the person to whom the title of the deceased may be transferred as heir or otherwise shall give notice of such transfer to the Deputy Collector within three months from the date of death of the deceased.

11. That the grant shall be liable to be revoked by the assigning authority at any time during a period of three years from the date of regulation framed for the colony regarding the construction and location of his house or does not keep the site in a sanitary condition and shall not be made permanent at the end of the said period unless the assigning authority is satisfied that the assignee has been of good behavior, has obeyed the regulations framed for the colony regarding the constructions and location of his house and has kept the site in a sanitary conditions."

21. The Learned Counsel for the Petitioner contends that R11 and R12 had violated the conditions issued in the Form of Order of Assignment of House site to them in M.V.P.No.9 of 2008, dated 20.09.2017 and it is for the 'concerned Authorities' to Revoke/cancel the Assignment for violation of the conditions.

22.On a careful consideration of respective contentions, the attendant facts and circumstances of the present case and also this Court taking note of the stand taken by the 6th Respondent/The Director of Survey and Land Records, in his counter, which was adopted by the other Official Respondents, and also going through the contents of the Writ Affidavit of the Petitioner, comes to an irresistible and inescapable conclusion that the Petitioner, in this Writ Petition, had at Paragraph No.6 had specifically averred that she has no other alternative access for reaching her house, except the 'Common Pathway', comprised in R.S.No.184/54, Seliamedu Revenue Village, Bahour Commune, Puducherry, which is a claim for 'Easementary Right' and the said issue has to be gone into in a threadbare fashion, before the Competent 'Civil Forum', for necessary adjudication by means of letting in oral and documentary evidence (through examination of witnesses, etc). Further, the counter of the 6th Respondent deals with the aspect of Assignment of lands to various Assignees in R.S.No.184 and the said allotment made to them is also not uniform, but according to the area occupied by them. Hence, this Court deems quite fit and proper in directing the Petitioner to approach the concerned competent 'Civil Forum' by filing a necessary Civil Suit and to seek redressal of her grievance (including the aspect of sale of Assigned Land by R11 and R12). In the Civil Suit, if any, filed by the Petitioner, seeking necessary claim in regard to her 'Easementary Right', before the Competent Forum, it is always open to her to raise all factual and legal pleas before the said Forum, if she so desires/advised.

With the above observations/directions, the Writ Petition shall stand disposed of. No costs. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

- 1.The Chief Secretary to Government,
Government of Puducherry,
Secretariat,
Puducherry.

- 2.The Secretary to
Her Excellency Lt.Governor,
Rajnivas,
Puducherry.
- 3.The Secretary to Government,
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- 9.The Tahsildar,
Taluk Office,
Bahour,
Puducherry.

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10.The Deputy Tahsildar,
Taluk Office,
Bahour,
Puducherry.

+1cc to Mr.M.Gnanasekar, Advocate, S.R.No.59225

+1cc to Mr.Prakash Adiapadam, Advocate, S.R.No.60224

+1cc to the Government Pleader, S.R.No.59209

W.P.No.9224 of 2018

GJ(CO)
GSP(17/09/2018)



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