

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL
and
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

W.P.No.13727 of 2015

M.G.Desan

.. Petitioner

Vs.

1. The Commissioner,
Chengalpattu Municipality,
Chengalpattu.

2. The District Collector,
Kancheepuram District,
Kancheepuram.

3. The Tahsildar,
Chengalpattu Taluk,
Chengalpattu.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the respondents to remove the Encroachment and restore the pathway (private) running through S.Nos.594/1A and 594/2A at Natham, Ward IV, Block VII, Chengalpattu to an extent of 4 x 108 feet.

For petitioner : Mr.V.Lakshminarayanan

For Respondents : Mr.P.Srinivas for R-1
Mr.J.Pothiraj, Spl.G.P. for RR-2 and 3

ORDER

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

This Writ Petition is filed for issuance of a Writ of Mandamus to direct the respondents to remove the Encroachment and restore the pathway (private) running through S.Nos.594/1A and 594/2A at Natham, Ward IV, Block VII, Chengalpattu to an extent of 4 x 108 feet.

2. No counter affidavit is filed on behalf of the Respondents.

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

4. According to the Petitioner, the property bearing S.No.595/3, measuring 4,393 Sq.Ft. situate at Natham, Ward IV, Block VII, Chengalpattu Town, absolutely belongs to him and he is in possession and enjoyment of the same. Further, he had decided to construct further building in the vacant land and had commenced the construction works. The only way for approaching the Petitioner's land from Police Line Street is through the Road running through the property bearing S.Nos.594/1A and 594/2A. The Petitioner's adjoining land holders in S.Nos.594 and 595 are also enjoying the said Road alone to reach their Holdings. It is a private pathway. The Municipal Authorities have no right whatsoever. In fact, the said private Road is 4 feet in breadth and 108 feet in length. On the West of the said Road, there is a Canal, which is normally called as 'Malai Kalvoy'. The Town Survey Register shows the aforesaid common pathway/Road as well as 'Malai Kalvoy'. The said 4 feet Road/common pathway had existed for several Decades and it is enjoyed by the Petitioner and other land holders for several Decades. In short, it is a private Road and has been left for the purpose of the land holders by the owners of the Survey Number.

5. The stand of the Petitioner is that the lands are ancestral properties of Nataraja Chettiar and he had left the way for access from Police Line Street and the said right had been confirmed in all the conveyances made in respect of the properties bearing S.Nos.594 and 595. Likewise, they had been granted the right to use the said land as common pathway by the petitioner to reach his Holdings through the Sale Deed, dated 15.12.1997. Other than the aforesaid Lane, the Petitioner has no other access to reach his property from the Police Line Street.

6. The grievance of the Petitioner is that in February 2013, the Municipal Authorities attempted to interfere with the private Road by laying a Drainage Pipeline. Prior permission was not obtained from any of the land owners. When resistance was made by the petitioner and other concerned persons, the Police Officials were summoned to threaten them. In fact, the width of the Road was reduced to 1-1/2 feet and it is per-se impossible for any of them even to move a cycle freely.

7. At this stage, the Learned Counsel for the Petitioner submits that due to the Encroachment made by the Municipal Authorities, the Petitioner was not able to take his vehicle through the private Street. The Drainage is left open and the Pit is dangerous for the residents, especially the children in the area. The vehicles are parked on the Street and the petitioner and others walked home.

8. The Learned Counsel for the Petitioner contends that the Respondents do have obligation to save the Lane/Road and they

have no right to cause obstruction/Encroachment in the Lane. Because of the mischievous activities of the Respondents, the entire private lane has been damaged and that the access to the private Holdings had been obstructed. In short, the reduction of the width of the Lane from 4 feet to 1-1/2 feet is an illegal and unjust one. Hence, the Petitioner has filed the present Writ Petition for the relief stated supra.

9. In the instant case, it comes to be known that the Petitioner, as early as on 30.12.2014, had issued a Lawyer's notice addressed to the First Respondent/Commissioner of Chengalpattu Municipality and four other Government Officials, whereby and whereunder, the restoration of pathway to its original position, namely 4 feet East-West and 108 feet North-South on the East of the 'Malai Kalvoy' was sought for within 15 days from the date of receipt of the said notice. Added further, the District Revenue Officer of the Second Respondent/District Collector's Office, Kancheepuram, had addressed a communication to the Third Respondent/Tahsildar, Chengalpattu on 23.02.2015, signed on 24.02.2015, whereby and whereunder, a direction was issued to take appropriate action and communicate the same to his Office with regard to the said Lawyer's notice. In spite of the said communication of the District Revenue Officer, no tangible steps have been taken in the subject matter in issue.

10. It transpires from the undated letter/Representation of the petitioner, addressed to the First Respondent/Commissioner of Chengalpattu Municipality that they claim ownership of the public pathway in which the First Respondent/Municipality had committed trespass by demolition and putting up the Bund of the Municipality, which is an illegal act. Further, in the said Representation, it was candidly made quite clear that after leaving 4 feet breadth of the pathway, the Petitioner and others have no objection for the First Respondent/Municipality to act. To put it precisely, the Petitioner in his undated Representation, along with two others, had enclosed the Government documents relating to the public pathway, copy of Patta in respect of Ward 4, Block-7, T.S.Nos.594/1A and 594/2A and also copy of the survey report in S.No.594/2B, which was measured and filed as document recently in a case in Court.

11. In view of the fact that the Petitioner's undated Representation along with two others, addressed to the First Respondent/Municipality, has not seen the light of the day, and also this Court keeping in mind another fact that the District Revenue Officer of the District Collector's Office, Kancheepuram, had addressed a Memorandum, dated 23.02.2015 to the Third Respondent/Tahsildar, requiring him to take appropriate action and to communicate the result of the same to his Office, since there has been a lull in the subject matter in issue, at this stage, this Court, without delving deep into the merits of the matter and also not expressing any opinion one way or the other in the subject matter in issue, directs the Respondent Nos.1 to 3

to act in unison and to look into the said undated Representation of the Petitioner and others and the subsequent communication of the District Revenue Officer, Kancheepuram, dated 23.02.2015, and this Court, to prevent the aberration of justice and in furtherance of the substantial cause of justice, directs the Second Respondent/District Collector, Kancheepuram to take a final call in the subject matter in issue and to pass necessary orders based on the said undated Representation of the petitioner and two others, by providing necessary opportunity of hearing to the petitioner and others concerned, by adhering to the principles of natural justice, within a period of four weeks from the date of receipt of a copy of this order.

12. Before passing the final order as directed above, the Second Respondent/District Collector is directed to provide a personal hearing/reasonable opportunity of hearing to the Petitioner and others concerned, to air their grievances, if any, if they so desire/if they are so advised. The Second Respondent/District Collector shall fix the time and date of enquiry well in advance and issue notice to the Petitioner and two others who have signed the undated Representation and also others concerned and on the date, time and place specified, the Petitioner and two others and others concerned are directed to appear for an enquiry without fail. During the course of enquiry, it is open for the Petitioner and two others (who had submitted the undated representation) and also others concerned, to produce necessary material documents to substantiate their version of the case and if the Petitioner and two others and others concerned, produce the said documents, the same can be looked into by the Second Respondent/District Collector and to advert to all the factual and legal pleas raised by them and to pass a reasoned speaking order in a dispassionate and unbiased manner, of course, uninfluenced and untrammelled by any of the observations made by this Court in the present Writ Petition.

13. It cannot be gainsaid that the Petitioner and two others (who had submitted the undated representation addressed to the First Respondent/Municipality) and others concerned, are directed to offer their unstinted co-operation and assistance to the Second Respondent/District Collector so as to enable him to complete the enquiry within the time adumbrated by this Court above.

14. With the above observations and directions, the Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar (CO)

//True copy//

Sub Assistant Registrar

CS

To

1. The Commissioner,
Chengalpattu Municipality, Chengalpattu.
2. The District Collector,
Kancheepuram District, Kancheepuram.
3. The Tahsildar,
Chengalpattu Taluk,
Chengalpattu.

+1cc to Mr.V.Raghavachari, Advocate SR.No.85356

+1cc to Mr.P.Srinivas, Advocate SR.No.85993

+1cc to Government Pleader SR.No.85871

W.P.No.13727 of 2015

VBA(CO)
GMY(02/01/2019)