

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28/8/2018

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Petition No.1261 of 2018

R. Velu

...Petitioner

Vs

1. The Secretary to Government
Revenue Department
Secretariat
Chennai 600 009.
2. The District Collector
Collectorate
Sathuvachari
Vellore.
3. The Sub-Collector
Sub-Collector's office
Thirupattur
Vellore District.
4. The Director of Planning
Vellore District.
5. The Tahsildar
Thirupattur Taluk
Thirupattur
Vellore District.
6. The Block Development officer
Panchayat Union
Kandhili
Thirupattur Taluk
Vellore District.
7. The Village Administrative Officer
Nariyaneri Village
Thirupathur Taluk
Vellore District.

8. The Village Administrative Officer
Pallathur Village
Thirupathur Taluk
Vellore District.

9. The Panchayat President
Pallathur Village
Thirupathur Taluk
Vellore District.

10. The Panchayat President
Nariyaneri Village
Thirupathur Taluk
Vellore District.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandmaus to call for the entire records of the order of the sixth respondent in Na.Ka.A3/434/2016 dated 6/1/2017 and further direct the respondents to consider the petitioner's representation dated 19/3/2017.

For petitioner ... Mr.A.Gouthaman

For respondents ... Mr.T.N.Rajagopalan
Government Pleader
for R.R.1 to 5.

Mr.E.Manoharan
Additional Government Pleader
for R.6.

O R D E R

(Order of the Court was made by S.MANIKUMAR, J)

Claiming himself to be a representative of Nariyaneri Village, Mr.R.Velu, petitioner, has filed the instant writ petition, to quash the proceeding of the Block Development Officer, Panchayat Union, Thirupathur Taluk, Vellore District, in R.C.No.A3/434/2016, dated 6/1/2017, and consequently, has prayed for a direction, to the respondents, to consider his representation, dated 19/3/2017.

2. Supporting the prayer sought for, petitioner has contended that the District Collector, Tirupathur District, has issued a Notification, dated 21/6/1996, annexing, part S.Nos.316 to 382, Nariyaneri Revenue Village to Pallathur Village. But the said Notification was not given effect to by the respondents, and all sales tax, property tax, encumbrance

certificate, stood in the name of Nariyaneri Village only.

3. Petitioner has contended that there are factories, burial ground, college and other educational institutions, in S.Nos.316 to 382. Roads, water tax, borewells, Anganvadi buildings all constructed, from the funds belonged to Nariyaneri Village. Notification, dated 21/6/1996, was not given effect for nearly 20 years.

4. In 2017, attempts were made to measure and demarcate, survey numbers, stated in the Notification. Inter correspondence between Block Development Officer, Kandili, Vellore District and Tahsildar, Tirupathur, dated 6/1/2017, reflect the sentiments of the villagers over the annexure of the above S.Nos., which resulted in agitation. Being aggrieved by the above said inter-correspondence, petitioner has made a representation, to the Sub-Collector, Tirupathur, Vellore District. As there was no response, petitioner has filed the instant writ petition, to quash the inter departmental correspondence and prayed for the relief, as stated supra.

5. To substantiate that there was no demarcation, for nearly 20 years, the petitioner has relied on the endorsement given by the Sub-Collector, Tirupathur District, wherein, the Sub-Collector has stated that there was no intention, on the part of the Government, to separate the properties, situated in S.Nos.316 to 382, Nariyaneri Village account, by sub-dividing the same, and to include the said properties, in Pallathur Village Account.

6. Attention of this Court was also invited to the property tax receipt and encumbrance certificate, issued by the Registration Department, to substantiate that tax was collected, in the name of Nariyaneri Village and only during 2017 - 2018, collection of tax has been done, in the revenue account of Pallathur Village.

7. Mr.T.N.Rajagopalan, Government Pleader for the respondents 1 to 5, submitted that Notification, dated 21/6/1996, has been issued in the year 1996, and that the same has not been challenged. Inviting the attention of this Court, to the Encumbrance Certificate, he submitted that demarcation has been done, and therefore, relief prayed for, in the instant writ petition cannot be granted.

8. Heard the learned counsel for the parties and perused the materials available on record.

9. There are sufficient materials to indicate that measurement and demarcation of the above said survey numbers have been done by the revenue authorities, and annexed the same,

to Pallathur/revenue village.

10. Letter, dated 6/1/2017, addressed to the Tahsildar, Tirupathur, is inter departmental correspondence. Letter, dated 6/1/2017 is reproduced hereunder:-

Na.Ka.Aa3/434.2016 dated 6/1/2017

Sir,

Sub: Panchayats Limit - Vellore District - Kandili Panchayat Union, Pallathur Panchayat and Nariyaneri Panchayat limits - survey is requested to be conducted and the public of Pallathur Village indulged in road picketing and they had waived the black flag and indulged in the agitation for long days - action was taken and the old documents in connection with the limit of Panchayats were searched and found. As per that on the basis of the survey numbers, the details of the Panchayats being divided published in the gazette is enclosed with this. On that basis the survey for the Pallathur and Nariyaneri Panchayats - requested - regarding.

Ref: 1. Representation of Pallathur Village, dated 21/6/2016

2. Gazette dated 23/5/1995, which was published as per the Section 1 and Sub-Section 1 (a) of Tamil Nadu Panchayats Act, 1994.

In the limits of Pallathur and Nariyaneri Village Panchayats, which come under the Kandili Panchayat Union, Vellore District was requested to be surveyed and as per the reference 1 herein above, as the public of Pallathur Village, placed a request, the documents pertaining to Panchayat limit were searched. At present, as per the reference 2 herein above, they are found in the gazette which was published as per Section 4 and Sub-section 1 (a) of Tamil Nadu Panchayats Act. The details of 20 Panchayat Unions, which comes under Vellore District divided as per the survey numbers.

Therefore, on the basis of the gazette which is enclosed herewith.

1. Pallathur Panchayat ... Padanavadi revenue village one part from S.No.1 to 107
Nariyaneri Revenue village one part from Survey Nos.316 to 382.
2. Nariyaneri Panchayat ... Nariyaneri revenue village one part from Survey Nos.

11. Writ Petition filed on the basis of interdepartmental correspondence is not maintainable. Reference can be made to few decisions:-

(i). In Bachhittar Singh Vs. State of Punjab, reported in AIR 1963 SC 395, a Hon'ble Constitution Bench of the Hon'ble Supreme Court, considered, as to whether a note file, which did not fructify into an order, and communicated to the petitioner therein, can give rise to a cause of action, and on the above facts, at paragraph Nos.9 and 10, held as follows:

9. The question, therefore, is whether he did in fact make such an order. Merely writing something on the file does not amount to an order. Before something amounts to an order of the State Government two things are necessary. The order has to be expressed in the name of the Governor as required by clause (1) of Article 166 and then it has to be communicated. As already indicated, no formal order modifying the decision of the Revenue Secretary was ever made. Until such an order is drawn up the State Government cannot, in our opinion, be regarded as bound by what was stated in the file.

10. Thus it is of the essence that the order has to be communicated to the person who would be affected by that order before the State and that person can be bound by that order. For, until the order is communicated to the person affected by it, it would be open to the Council of Ministers to consider the matter over and over again and, therefore, till its communication the order cannot be regarded as anything more than provisional in character.

(ii). The views expressed in Bachhittar Singh's case, was followed, in Laxminarayan R.Bhattad Vs. State of Maharashtra, reported in 2003(5) SCC 413, wherein, the Hon'ble Supreme Court held, a right created under an order of a statutory authority must be communicated to the person concerned, so as to confer an enforceable right. The said proposition of law has once again reaffirmed in Sethi Auto Service Station Vs. Delhi Development Authority, reported in 2009 (1) SCC 180, wherein, the Hon'ble Apex Court held that internal notings and departmental communications between Government Agencies, do not have the sanction of law to be an effective order, unless, it culminates into an executable order, by communication to the person concerned, affecting his right or conferring any legal right. Reliance can also be made to the decision of the Hon'ble Supreme Court in Union of India and others Vs. Vartak Labour Union (2), reported in (2011) 4 SCC 200.

12. Rule 4 of the Tamil Nadu Panchayats Act, 1994, is extracted hereunder:-

Chapter III

Formation and Constitution of Village Panchayats, Panchayat Union Councils and District Panchayats Village Panchayats

4. Formation of Panchayat Villages - (1) The Inspector -

(a). shall, by notification, classify and declare every local area comprising a revenue village or villages or any portion of a revenue village or contiguous portions of two or more revenue villages as a Panchayat Village for the purposes of this Act; and

(b) shall, by notification, specify the name of such Panchayat Village

(2) (a) The Inspector may, by Notification, exclude from a Panchayat Village any area comprised therein.

(b). In regard to any area excluded under clause (a), the Inspector may by notification under sub-section (1), declare it to be a Panchayat Village or include it in any contiguous Panchayat Village under clause (c) (i).

(c). The Inspector may, by notification -

(i). include in a Panchayat village any local area contiguous thereto; or

(ii). cancel or modify a notification issued under sub-section (1) ; or

(iii). alter the name of any Panchayat Village specified under sub-section (1)

(d) Before issuing a notification under clause (a) or under clause (b) read with sub-section (1) or under clause (c), the Inspector shall give the Village Panchayat or Village Panchayats which will be affected by the issue of such notification, a reasonable opportunity of showing cause against the proposal and shall consider the explanations and objections, if any, of such Village Panchayat or Village Panchayats.

(3). Any rate-payer or inhabitant of such area or any Village Panchayat concerned, may, if he or it objects to any notification under sub-section (1) or sub-section (2), appeal to the Government within such period as may be prescribed

(4). The Inspector may pass such orders as he may deem fit -

(a) as to the disposal of the property vested in a Village Panchayat which has ceased to exist and the discharge of its liabilities;

(b) as to the disposal of any part of the property vested in a Village Panchayat which has ceased to exercise jurisdiction over any local area,

and the discharge of the liabilities of the Village Panchayat relating to such property or arising from such local area.

(5). An order made under sub-section (4) may contain such supplemental, incidental and consequential provisions as the Inspector may deem necessary, and in particular may direct -

(i). that any tax, fee or other sum due to the Village Panchayat or where a Village Panchayat has ceased to exercise jurisdiction over any local area, such tax, fee or other sum due to the Village Panchayat as relates to that area shall be payable to such authorities as may be specified in the order:

(ii). that appeals, petitions or other applications with reference to any such tax, fee or sum which are pending on the date on which the Village Panchayat ceased to exist or, as the case may be, on the date on which the Village Panchayat cease to exercise jurisdiction over the local area, shall be disposed of by such authorities as may be specified in the order.

13. By letter, dated 30/3/2017, Sub-Collector, Tirupathur Taluk, has stated that there was no intention, on the part of the Government, to separate properties, situated in S.Nos.316 to 382 in Nariyaneri Village. For brevity, said letter, dated 30/3/2017 is extracted hereunder:-

O.M.A./5/2075/2017

Office of Sub-Collector
Thirupattur,
Vellore District.

Endorsement

Subject: Dispute with regard boundaries of Panchayat -
Thirupattur Taluk - Issue with regard to
separating the properties situated in S.No.
316 to 382 from Nariyaneri Village account
and include the said lands in Pallathur
Village Panchayat and objections relating to
the above said issue.

Ref : Petition dated 19/3/2017 given by Mr.Velu,
Son of Rathina Gounder

- - - - -

Thirupattur Taluk, objections of petitioner
with regard to the properties situated in
S.Nos.316 to 382 situated in Nariyaneri Village
Account, separating the said properties from
Nariyaneri Village account and to include the same
in Pallathur Village Account. There is no

intention on the part of the government to separate the properties situated in S.Nos.316 to 382 in Nariyaneri Village account by sub-dividing the same and to include the said properties in Pallathur Village Account. Further it is remembered to you that the boundaries of Panchayats are till in force as per Government Order.

For Sub-Collector
Thirupathur
Vellore District.

14. Petitioner is stated to have sent a representation, dated 19/3/2017, to several authorities, including the Sub-Collector, Tirupathur. Inspector/Collector of Panchyats/District Collector the competent authority, to cancel or modify the Notification, issued under sub-Section 1 of Section 4 of the said Act. Sub-Collector, Tirupathur District has acknowledged the said representation.

15. Power is conferred on the Inspector/District Collector to modify. Petitioner has stated that a copy of the representation, dated 17/3/2017, stated to have been addressed to the Sub-Collector, Tirupathur, Vellore District, has been marked to the District Collector, Vellore.

16. In view of the statutory provisions, stated supra, it is always open to the petitioner, to make a representation, to the competent authority, to seek for cancellation of the Notification.

17. In view of the averments that there was inaction on the part of the respondents, in not measuring, demarcating and annexing S.Nos.316 to 382, Nariyaneri village, for several years and the information conveyed by the Sub-Collector, Tirupathur, Vellore District, not to separate the property situated in S.Nos.316 to 382, it is always open to the petitioner, to send a copy of the representation to the District Collector/Inspector, seeking for modification of the Notification, issued in 2006. We are in 2018. However, respondents are also duty bound to consider, as to whether any representation was made after the Notification issued in 2016, whether considered or not? The District Collector, Sathuvachari, Vellore District/second respondent is directed to pass orders, on the representation, dated 17/3/2017, by following the procedure contemplated, under Section 4 (2d) of the Tamil Nadu Panchayats Act, 1994, on merits and in accordance with law, within a period of eight weeks, from the date of receipt of a copy of this order.

18. With the above directions, instant writ petition is disposed of. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

mvs.

To

1. The Secretary to Government
Revenue Department
Secretariat
Chennai 600 009.
2. The District Collector
Collectorate
Sathuvachari
Vellore.
3. The Sub-Collector
Sub-Collector's office
Thirupattur
Vellore District.
4. The Director of Planning
Vellore District.
5. The Tahsildar
Thirupatthur Taluk
Thirupattur
Vellore District.
6. The Block Development officer
Panchayat Union
Kandhili
Thirupatthur Taluk
Vellore District.
7. The Village Administrative Officer
Nariyaneri Village
Thirupathur Taluk
Vellore District.
8. The Village Administrative Officer
Pallathur Village

Thirupathur Taluk
Vellore District.

9. The Panchayat President
Pallathur Village
Thirupathur Taluk
Vellore District.

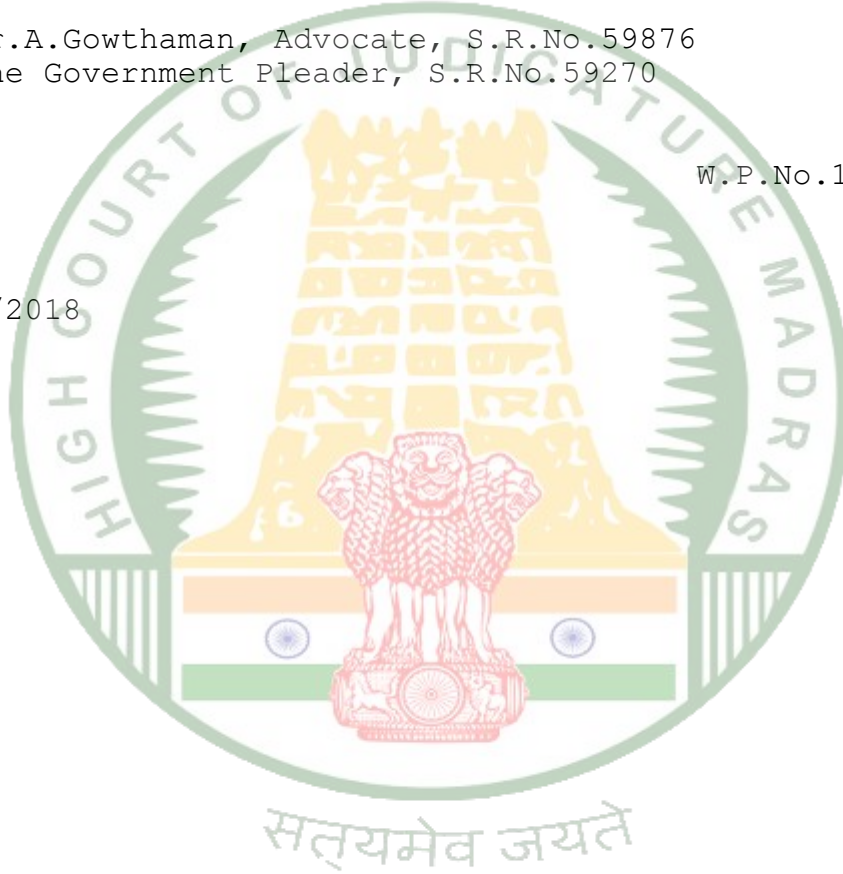
10. The Panchayat President
Nariyaneri Village
Thirupathur Taluk
Vellore District.

+lcc to Mr.A.Gowthaman, Advocate, S.R.No.59876
+lcc to the Government Pleader, S.R.No.59270

W.P.No.1261 of 2018

PA(CO)

rrs 28/09/2018



WEB COPY