

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :01.11.2018

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

**W.P.No. 32321 of 2014**

**M.P.No.1 of 2014**

M.Nallasamy

..Petitioner

vs

1. The District Revenue Officer,  
Office of the Collector of Erode District,  
Erode District-638 011.

2.Revenue Divisional Officer,  
Office of the Revenue Divisional Office,  
Erode.

3.The Zonal Deputy Tahsildar (1),  
Office of the Tahsildar,  
Perundurai Taluk, Perundurai,  
Erode District.

4.Smt.Rathinammal

सत्यमेव जयते... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus Calling for the records of the first respondent culminating in the order dated 04.01.2013 made in Na.Ka.No. 3227/2011/U.4 and quash the same and consequently direct the first respondent to declare the survey Nos. 188/4 188/7 and 207/10 as Nilaviyal Vandipathi.

For Petitioner : Mr.P.Aishwarya

For Respondents : Mr.R.S.Selvam, Government Advocate  
for R1 to R3

Mr.K.P.Prabhuraj for Mr.R.Srinivas for R4

### ORDER

The order passed by the 1st respondent in proceedings dated 04.01.2013, rejecting the claim of the writ petitioner for grant of Patta is under challenge in this writ petition.

2. The petitioner states that the present writ petition is filed challenging the correctness of the mutation effected by the revenue authorities/respondents 1 to 3, without considering the documents of title pertaining to the "Nilaviyal Vandipathai" (Cart Track) running from the village natham poromboke lands to the petitioner's various lands in the adjoining area comprised in S.Nos.188, 191 etc.,The petitioner states that even in the absence of document of title which would convey the title from the predecessor of the 4th respondent, mutation in revenue records have occurred at the instance of the third respondent, originally vide order dated 29.05.200 of the proceedings of the third respondent made, whereby the mutation in revenue records with reference to S.Nos.188/4, 188/7 and 207/10 was caused in the name of the Rathinammal, the 4th respondent in

Patta Nos.323, 326, and 327 respectively. The 4th respondent vide Sale Deed dated 12.02.1987 registered as Document No.191/87 purchased land comprised in R.S.Nos.189/1, 189/2 and one-twelfth (1/12th) share in well comprised in R.S.No.188/4. The writ petitioner purchased the entire extent of 0.24.0 Hectares of land from Mr.C.Arthanari Gownder in R.S.No.189/1 in the year 1995. His sons immediately have effected mutation in revenue records. The 4th respondent deliberately caused mutation of revenue records only in S.Nos.188/4, 188/7 and 207/10, 189/1 & 188/4, even without any document of title, however, on the strength of Sale Deed 12.02.1987. The petitioner states that the impugned order passed by the 1st respondent in proceedings 04.01.2013 is erroneous and contrary to law and the manner in which the rights of the parties have been altered is by way of oral partition. Thereby convey the rights of the predecessor in interest viz., Mr.C.Arthanari Gownder has not been taken note of by the respondents. At the outset, the petitioner states that the documents filed and the grounds raised by the writ petitioner had not been considered while passing the impugned order vide proceedings dated 04.01.2013.

3. The learned Government Advocate appearing on behalf of the respondents 1 to 3 relying on the counter statement contended that the

order passed in WP.No.3793 of 2010 is in no manner relevant with the present case. The present writ petitioner encroached on the Cart Track in R.S.No.188/7 of the Mullampati village by way of putting fence and thereby, the petitioner tried to prevent the right of the 4th respondent and the public to use this cart track. The son of the 4th respondent and other users of this cart track presented a petition before then the Tahsildar, Perundurai who lodged a criminal complain against the petitioner before Kanjikovil Police Station Under Section 431 IPC to block the entrance to and exit of this public pathway against this criminal complaint. The petitioner filed WP.No.3793 of 2010 before this Court which was disposed of with a observation that the "authorities could not dislodge the petitioner from the possession of the petitioner encroached into the public property. They are at liberty to proceed against the petitioner in accordance with law. Until the respondent authorities are evicting the petitioner in accordance with la, if the petitioner has encroached in to the public property, the possession of the property could not be disturbed R.S.No.188/7 of Mullampatti Village is a a plan marked cart track. According to RSO 26 and instructions of the land Administration Department. A plan marked pathway in a patta land is a Government land. Eviction of encroachment in such lands need be invoked in cases where the encroacher has interfered with this plan marked detail so as to close its entrance to and exit from this lands. The 4th respondent

son has preferred a petition in this connection to Kanjikoil Police Station. The said petition was referred to 1st respondent who initiated proceedings under Section 147 Cr.P.C. A detailed enquiry was conducted and the 1st respondent ordered to remove the said encroachment of the present petitioner.

4. The Cart Track, subject matter of the said writ petition is only a common Cart Track. The use of cart track by the petitioner and the 4th respondent will not affect the right of each other. It can be enjoyed conveniently by both of them. Moreover, it is a property of Government. Any public can use this pathway. To settle his personal antipathy, the present petitioner tried to prevent the 4th respondent right to use the said cart track . Thus, the present petitioner has come forward to file the present petition to give trouble to the 4th respondent.

5. It is further stated that the Civil Suit instituted is no way connected with the present subject of the writ petition and the present petitioner was set exparte in Civil Suit in O.S.No.246 of 2005 on the file of District Magistrate Court, Perundurai as per the opinion given by the Government Pleader of Perundurai, District Munsif Court. The Government authorities were not impleaded as party defendants in the said Civil Suit. It is a suit

between the parties. Hence the decision will not bind over the Government because the property belongs to Government.

6. Relying on the grounds raised by the 1st respondent, the learned Government Advocate made a submission that the land in question belongs to the Government which was classified as "Cart Track" and therefore, the same is to be used as a public pathway by the public at large. The writ petitioner cannot claim any ownership or title in respect of the land in question.

7. This Court is of an opinion that if at all the petitioner claims any title or ownership in respect of a particular property. It is left open to him to approach the competent Civil Court of law for the purpose of adjudication of title, ownership and possession. As far as the present writ petition is concerned, the land in question is classified as "Cart Track" and therefore, the land belongs to the Government. Thus, the writ petitioner is liable to be evicted from the Government land by following the procedures contemplated under the Tamil Nadu Land Encroachment Act, 1905. The 1st respondent also states that the present writ petition is filed with an ill motive to disturb the 4th respondent. This apart, the said Cart Track is used as public pathway and the public at large are also using the pathway.

This being the factum of the case, the writ petitioner has not produced any valid ground for the purpose of considering the grounds. The respondents 1 to 3 are directed to verify the original revenue records and once again ascertain the classification and in the event of identifying that the land in question is a Government land, then appropriate actions are to be initiated for eviction of all such encroachers and utilise the land for the public welfare and in the interest of public at large.

8. Accordingly, writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

01.11.2018

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Internet:Yes/No

Index : Yes/No

Speaking/Non speaking order

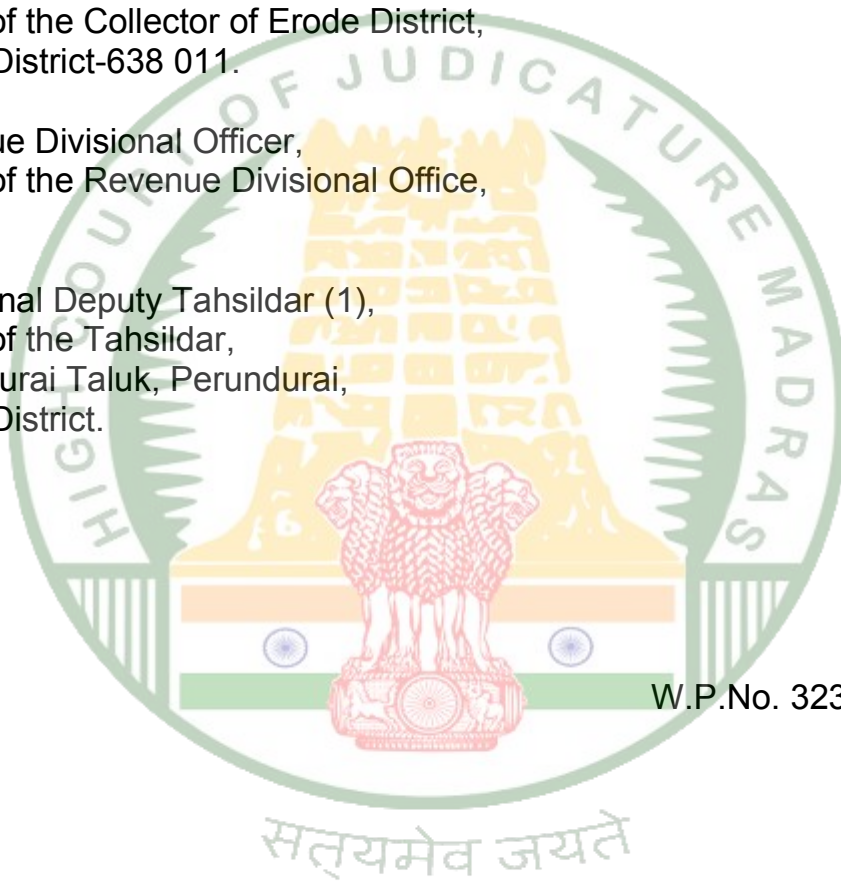
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S.M.SUBRAMANIAM, J.  
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To

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