

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.07.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.17449 of 2017 and
WMP.No.20733 of 2018

V.K.Tamilmani

...Petitioner

Versus

1. The District Collector,
Kancheepuram District,
Kancheepuram.
2. The Commissioner of Land Administration,
Chepauk, Chennai-5.
3. The Secretary to Government,
Adi Dravidar and Tribal Welfare Department,
Secretariat, Chennai-9.
4. The Superintendent of Police,
Kancheepuram District,
Kancheepuram-631 501.
5. The Inspector of Police,
Chengalpattu Taluk Police Station,
Kancheepuram District-603 002.

6. V.G.Thirumalai Naicker

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration, declaring that the land measuring 2.22 Acre comprised in Survey No.74/1, Vetha Narayanapuram Village, Chengalpattu Taluk, Kancheepuram District, as Panchami land and sale to other than scheduled caste or encroachment thereon is illegal and void abnatio.

For Petitioner
For Respondents
1 to 5

: Mr.R.Prabhakaran
: Mr.V.Jayaprakash Narayanan,
Special Government Pleader

O R D E R

The Writ Petition has been filed seeking to issue a Writ of Declaration, declaring that the land measuring 2.22 Acre comprised in Survey No.74/1, Vetha Narayanapuram Village, Chengalpattu Taluk, Kancheepuram District, as Panchami land and sale to other than scheduled caste or encroachment thereon is illegal and void ab initio.

2. Learned Counsel appearing for the petitioner submitted that the land comprised in Survey No.74/1, having an extent of 2.22 acre situated at Vetha Narayanapuram Village, Chengalpattu Taluk, was assigned to his father Kathirvel @ Sivaprakasam in the year 1966. Since then, his father and himself have been cultivating and rearing cattle in the said land and also constructed a house in the said property. During the year 2008, his father had settled the said property in favour of the petitioner and his brothers Parthasarathy and Padmanaban.

3. The learned Counsel for the petitioner further submitted that the village records like Chitta, Adangal, EB connection, Land Tax are all standing in the name of the petitioner and his brothers. While so, a local politician Mr.Balasubramanian has created a purported sale deed in favour of Ninthimathi in the year 2000, who subsequently sold the property in favour of her husband V.G.Thirumalai Naicker, the 6th respondent herein. Immediately after noticing the said alienation of the property, the petitioner applied under RTI Act and the Headquarters Deputy Tahsildar, Chengalpattu, by his reply dated 27.10.2016 informed the petitioner that the land in Survey No.74/1, Vetha Narayanapuram is the assigned land of Adi Dravidar as per 'A' Register that shows that the panjami land cannot be sold or reclassified. Further, the Panjami land cannot be alienated to any person for 10 years from the date of assignment and thereafter, it can alienated only to SC/ST (Depressed Classes).

4. The learned Counsel for the petitioner also submitted that when that is the legal position, the petitioner has brought to the notice of the District Collector and other respondents to take cognizance of the above facts and not to allow Thirumalai Naicker or anyone to encroach or trespass into their property. But there is no response from the respondents. Hence, the petitioner has preferred the present Writ Petition.

5. The learned Counsel for the petitioner fairly submitted that the 6th respondent had already approached this Court by filing Crl.O.P.No.915/2018 under Section 482 of Cr.P.C. seeking a direction to the respondents 1 and 2 therein to provide police protection to construct the compound wall as sought for in the complaint dated 10.12.2017 given by him. This Court by an order

dated 21.6.2018 giving a finding that since the land belongs to the 6th respondent, directed the police to give sufficient protection for putting up the compound wall around the said property. In the light of the above order passed in Crl.O.P.No.915/2018, the petitioner is unable to approach and express his position. That apart, one civil suit is also pending between the parties. Therefore, writ of declaration be issued declaring that the land measuring 2.22 Acre comprised in Survey No.74/1, Vetha Narayanapuram Village, Chengalpattu Taluk, Kancheepuram District, as Panchami land and sale to other than scheduled caste or encroachment thereon is illegal and void ab initio be issued.

6. Learned Special Government Pleader appearing for the respondents 1 to 5 opposing the said payer submitted that the prayer in the writ petition is liable to be rejected and the petitioner has to approach the civil court only.

7. I also find no merit in the writ petition. The reason is firstly, the petitioner is attempting to convert the writ jurisdiction of this High Court sitting under Article 226 of the Constitution of India into one of a civil court to pass a decree for declaration which is untenable, more particularly, when a civil suit in O.S.No.174/2011 is pending between the parties. Secondly, this Court when sitting under Section 482 of Cr.P.C., while entertaining the Crl.O.P.No.915/2018, by its order dated 21.06.2018 has given a clear finding in favour of the 6th respondent herein that the property belongs to him and it appears that another detailed order dated 3.7.2015 was passed by this Court in yet another Criminal Original Petition No.13607 of 2015 which shows that the 6th respondent has twice established his case that the property-in-question belongs to him. In any event, the matter has to be looked into only by the competent civil court where the suit is pending between the parties. Thus, I find no merit in the present Writ Petition.

8. In the result, the Writ Petition fails and the same is accordingly dismissed with liberty to the petitioner to approach the competent civil court. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS II)

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Sub Assistant Registrar

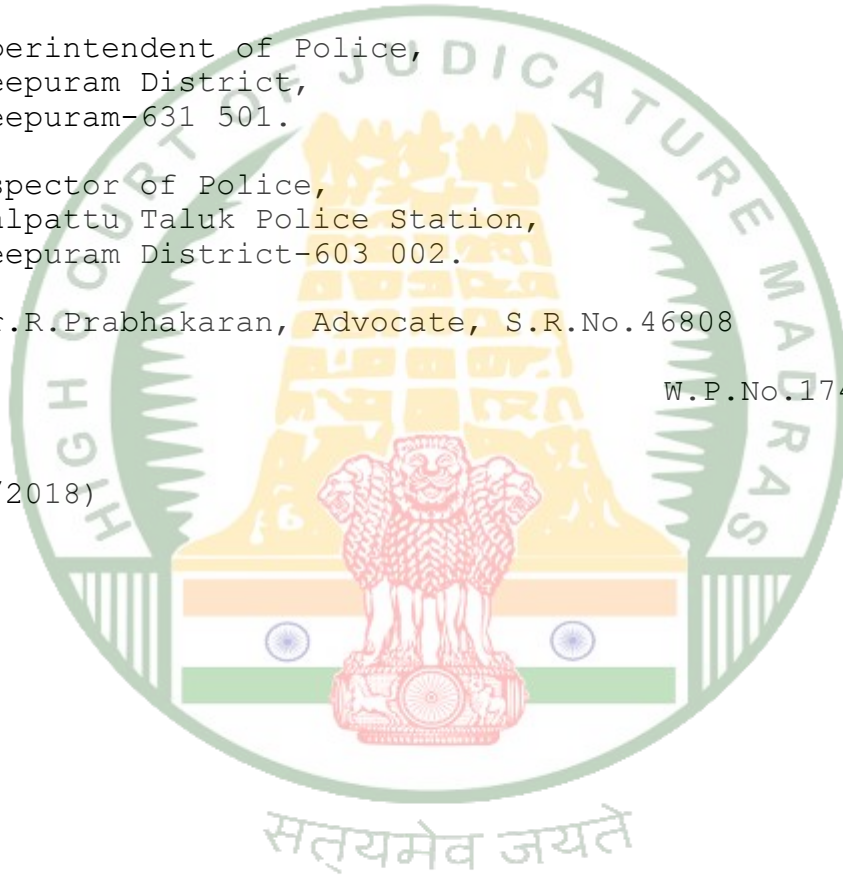
To

1. The District Collector,
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Kancheepuram.
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+2cc to Mr.R.Prabhakaran, Advocate, S.R.No.46808

W.P.No.17449 of 2018

GSP (25/07/2018)



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