

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Reserved on : 19.12.2017
Delivered on : 25.01.2018
CORAM :
THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.P.No.27153 of 2016
and
W.M.P.No.23322 of 2016 and
WMP.No.37063 of 2016

J.Jagadesh

... Petitioner

Vs.

1.The Tahsildar
Modakurichi Taluk,
Erode District.

2.S.Paramasivan

... Respondents

Prayer:Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the impugned order made in Na.Ka.No.980/2016-A2-578/2016 dated 29.06.2016 passed by the first respondent and quash the same.

For Petitioner : Mr.N.Manokaran

For R-1 : Mr.A.N.Thambidurai
Special Government Pleader

For R-2 : Mr.T.Seenivasan

सत्यमेव जयते
ORDER

(Order of the Court was made by P.RAJAMANICKAM,J.)

This Writ Petition is filed to quash the impugned order made in Na.Ka.No.980/2016-A2-578/2016, dated 29.06.2016 passed by the first respondent.

2.Heard the learned counsel appearing for the petitioner, the learned Special Government Pleader appearing for the first respondent and the learned counsel appearing for the second respondent.

3. According to the petitioner, he is the owner of the land measuring about 3.26 acres situated in old Survey No.105/2, Puthur Village, Erode District. The said old Survey No.105/2 has been reclassified as R.S.No.215 and 216 and again it has been sub divided as R.S.No.215/1 to 10 and 216/1 to 10. The petitioner's ancestors have formed the subject matter cart track measuring 6 cents in R.S.No. 215/9 to reach their other portions in R.S.No.216/1, 4A, 4B and 215/2 from east-west Kanagapuram Road. The remaining extent of the cart track measuring 9 cents in R.S.No.215/9 is being used as an access by the other pattadhars and it has been converted as a road, over which the petitioner has not claimed any title. The second respondent has occupied an extent of 6.10 cents in R.S.No.216/2 without any prior title over the property. He has created a self- serving settlement deed dated 13.05.2014 in the name of his son S.P.Thiyagarajan. In the said settlement deed, the second respondent has purposely described western boundary as a "public street" unmindful of the fact that the said property in R.S.No.215/9 is petitioner's private property. The subject matter cart track measuring 6 cents situated in R.S.No.215/9 is petitioner's separate property which is evident from the patta No.1167 issued by the first respondent. However, the second respondent has started giving pinpricks under the guise of claiming right over the petitioner private cart track. Hence, in order to avoid any mischief at the hands of the second respondent, the petitioner has erected a compound wall on his private property bearing R.S.No.215/9 in the month of June, 2015. On 24.11.2015, the second respondent gave a petition to the first respondent alleging that the subject matter of 6 cents in R.S.No.215/9 is also a common passage, since it has been described as "Nilaviyal Vandi Pathai" in the Revenue Records. On the basis of the said petition, the first respondent has called for a report from the Zonal Deputy Tahsildar, Modakurichi. On receipt of a notice from the Zonal Deputy Tahsildar, the petitioner has appeared before him. But without examining the petitioner, the Zonal Deputy Tahsildar has submitted a report to the first respondent stating that the said passage is a public pathway and based on the said report, the first respondent has passed the impugned order, directing the petitioner to remove the gate and compound wall, as if he has encroached the Government land.

4. The case of the first respondent is that the cart track in R.S.No.215/9 measuring 0.06.0 Hectres of Puthur 'A' Village, Modakurichi Taluk, Erode District is classified as "Nilaviyal Vandi Pathai" and even though the said cart track is running through the patta land, as per the Revenue Standing Order 26 (15), it is a Government land and public has got every right to use the said "Nilaviyal Vandi Pathai" and nobody can prevent the public from using the said cart track. Since it is a Government

land, based on the petition given by the second respondent, a notice was issued to the petitioner to appear for enquiry and on his appearance, enquiry has been conducted and an order has been passed under Section 7 of the Tamil Nadu Encroachments Act, 1905, directing the petitioner to remove the encroachments.

5. According to the second respondent, he is having property in R.S.No.216/2 and 215/10 and he used to go to the said property through the cart track running in R.S.No.215/9. The said cart track has been shown as "Nilaviyal Vandi Pathai" in Revenue Records. Since the petitioner has blocked the said cart track by putting iron gate and compound wall, he has submitted a representation before the first respondent. After enquiry, the first respondent has passed an order directing the petitioner to remove the encroachment. The petitioner, without exhausting the remedy available before the executive authority, has directly approached this Court with false documents and suppressing the facts.

6. The learned counsel appearing for the petitioner has submitted that subject matter of the cart track is situated in R.S.No.215/9 and patta for the said land stands in the name of the petitioner's father and five others. He further submitted that the petitioners forefathers have formed the said cart track in the patta land for reaching other properties and as such the second respondent has no right to use the said land as pathway to reach his property. He further submitted that neither the petitioner nor his predecessors in title have handed over the said property to the local panchayat and hence even the panchayat cannot claim any right over the said property. He further submitted that even assuming that the subject matter of the land is a Government land, since there is a bona fide dispute with regard to the title, the said dispute cannot be decided in a summary enquiry contemplated under Section 7 of the Tamil Nadu Encroachments Act, 1905.

7. In support of the aforesaid contentions, the learned counsel appearing for the petitioner has relied upon the following decisions:

1. A.Komalavalli Vs. the Madras Area Defence Services Co-operative House Construction Society Limited, (2000) 3 MLJ 10.

2. The Commissioner Vs. Bhavani Municipality, Bhavani Vs. C.Ramasamy (Deceased) and others, 2015 (4) CTC 25.

3. Government of Andra Pradesh Vs. Thummala Krishna Rao and another (1982) 2 SCC 134.

8. The learned Special Government Pleader has submitted that though the said cart track runs in a patta land, in view of the Revenue Standing Order 26(15), it is a Government land and hence after hearing both sides, an order has been issued under Section

7 of the Tamil Nadu Encroachments Act, 1905, directing the petitioner to remove the encroachment. He further submitted that as per the directions issued by this Court in W.P.No.26722 of 2013, dated 08.10.2014, the Government had issued the G.O.(Ms.) No.540, Revenue [LD6(2)] Department, dated 04.12.2014, constituting Redressal Committees for eviction of encroachment. He further submitted that the first respondent has passed the impugned order, after following the procedures prescribed in the aforesaid G.O. and if the petitioner feels that he is aggrieved by the impugned order, he should have filed an appeal before the Appellate Committee at Divisional Level and thereafter, he may file review petition before the Review Committee, but without exhausting those remedies, it is not open to the petitioner to approach this Court straight away by filing Writ Petition.

9. In support his contentions, the learned Special Government Pleader has relied upon the decision of this Court, passed in N.M.Ganeshan Vs. The Commissioner, Sathyamangalam Municipality (S.A.No.1641 of 2011) dated 06.11.2014.

10. The learned counsel appearing for the second respondent has adopted the arguments advanced by the learned Special Government Pleader.

11. The subject matter of the land is situated in R.S.No.215/9 measuring 0.06.0 Hectres, it roughly comes about 15 cents. In the extract of "A" Register filed by the second respondent, it is stated that the land situated in R.S.No.215/9 is a "Nilaviyal Vandi Pathai". In the field map also, it is shown as cart track. The petitioner also admitted in his affidavit which has been filed in support of the present writ petition that the subject matter is a cart track. So, it is clear that the subject matter is a cart track and the same is running in a patta land and the same has been shown as "Nilaviyal Vandi Pathai" in the Revenue records and also marked in the plan.

12. At this juncture, it would be relevant to refer Revenue Standing Order 26(15) which reads thus:

"15. Encroachments on plan-marked details:-- A plan-marked channel or pathway running in a patta land is a Government land. Eviction of encroachment in such lands need be invoked only in cases where the encroacher has interfered with the plan marked detail so as to close its entrance to and exit from his lands. In the case of pathways and cart tracks which have been used by the public till recently, the ryot should not be allowed to shift the course of the details to suit his own convenience. However, such diversions of plan marked channel from its original

course, with a view to consolidate his holding or to facilitate irrigation of the portions which would be otherwise severed need not be treated as encroachment."

13.A plain reading of the aforesaid provision shows that a plan marked pathway running in a patta land is a Government land and if any encroacher has interfered with the plan marked detail so as to close its entrance to and exit from his lands, an eviction can be ordered. So, in view of the aforesaid Revenue Standing Order even though the subject matter of the cart track is running in a patta land, it should be treated as a Government land. Admittedly, the petitioner has blocked the said cart track by putting iron gate and compound wall and therefore, the first respondent has rightly passed the order to remove the said encroachment.

14.In A.Komalavalli Vs. the Madras Are Defence Services Co-operative House Construction Society Limited, (2000) 3 MLJ 10, (supra) the roads were formed and maintained by the Society from out of its own funds for the benefit of the society and its members. The said road was not dedicated as a public road and the ownership was not transferred to the panchayat and hence this Court held that even assuming for a moment that in the lay out plan the said roads are mentioned as public roads, unless they are transferred to the panchayat by way of gift deed or by dedication, they will not become automatically panchayat roads and they will not also automatically vested with it. In the case on hand, the panchayat has not claimed any right over the said road. The Government is claiming right on the basis of the Revenue Standing Order 26(15). In the said decision the Revenue Standing Order 26(15) was not at all dealt with and therefore the said decision will not apply to the facts of this case.

15.In the Commissioner Vs. Bhavani Municipality, Bhavani Vs. C.Ramasamy (Deceased) and others, (2015) 4 CTC 25, (supra) also the municipality claimed right over Boosthathi Tar Road. This Court has held that the plaintiffs have not produced any evidence to show that the owners of the said road dedicated the road to panchayat or municipality and therefore it cannot be treated as the road vested with the municipality. In that case also Revenue Standing Order 26(15) was not dealt with and therefore the said decision also will not apply to the facts of this case.

16.In Government of Andra Pradesh Vs. Thummala Krishna Rao and another (1982) 2 SCC 134, (supra) the lands were acquired for the benefit of the Osmania University which was then administered as a Department of the Government of Hyderabad. In that case, the question involved was whether three plots of land were included in the acquisition notified by the Government of Nizam. The Tahsildar, Government of Andra Pradesh had passed an order by taking proceedings under Sections 6 and 7 of the

Land Encroachments Act, 1905, evicting the Nawab from the said lands. The Honourable Supreme Court has held that since there was a bona fide dispute with regard to the title and a plea of adverse possession also has been taken the summary remedy provided by sections 6 and 7 of the Land Encroachments Act, 1905, cannot be resorted to. But in the same judgment in para-8 it has been observed that a person who occupies a part of a public road, street, etc., it is in public interest to evict him expeditiously by resorting to the summary remedy provided by the Land Encroachments Act, 1905. For proper appreciation, the relevant portion of the said judgment is extracted here under:

" A person who occupies a part of a public road, street, bridge, the bed of the sea and the like, is in unauthorised occupation of property which is declared by Section 2 to be the property of the Government and, therefore, it is in public interest to evict him expeditiously, which can only be done by resorting to the summary remedy provided by the Act".

17. Therefore, even as per the aforesaid decision, the first respondent is entitled to evict the petitioner by resorting to the summary remedy provided under the Land Encroachments Act, 1905.

18. In the decision cited by the learned Special Government Pleader (i.e.,) N.M. Ganeshan Vs. The Commissioner, Sathyamangalam Municipality (supra) also it is clearly held in para -6 as follows:

"6. It is not disputed by the appellant that the land in question is classified in the revenue records as "Nilaviyal Chandu" and it meant for general public for their use as a public street. The respondent Municipality is one of the wings of the Government and is empowered to protect the public lands from being encroached."

So the aforesaid decision will squarely apply to the facts of this case.

19. It is also to be pointed out that as per the directions issued by this Court in W.P.No.26722 of 2013, dated 08.10.2014, the Government had issued the G.O.(Ms.)No.540, Revenue [LD6(2)] Department, dated 04.12.2014 Redressal Committees, for eviction of encroachment, have been constituted and procedures for eviction of encroachment also prescribed. By following the procedures prescribed in the said G.O., the first respondent has passed the impugned order. In the said G.O., itself, the Appellate Committee and Review Committee also constituted for

filing appeal and Review Petition against the order passed by the Tahsildar under Section 7 of the Tamil Nadu Encroachments Act, 1905. But without exhausting those remedies, the petitioner has straight away approached this Court. On this ground also this writ petition is liable to be dismissed.

20.For the aforesaid reasons, this writ petition is not maintainable and the same is liable to be dismissed. Accordingly, the Writ Petition is dismissed. The Connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

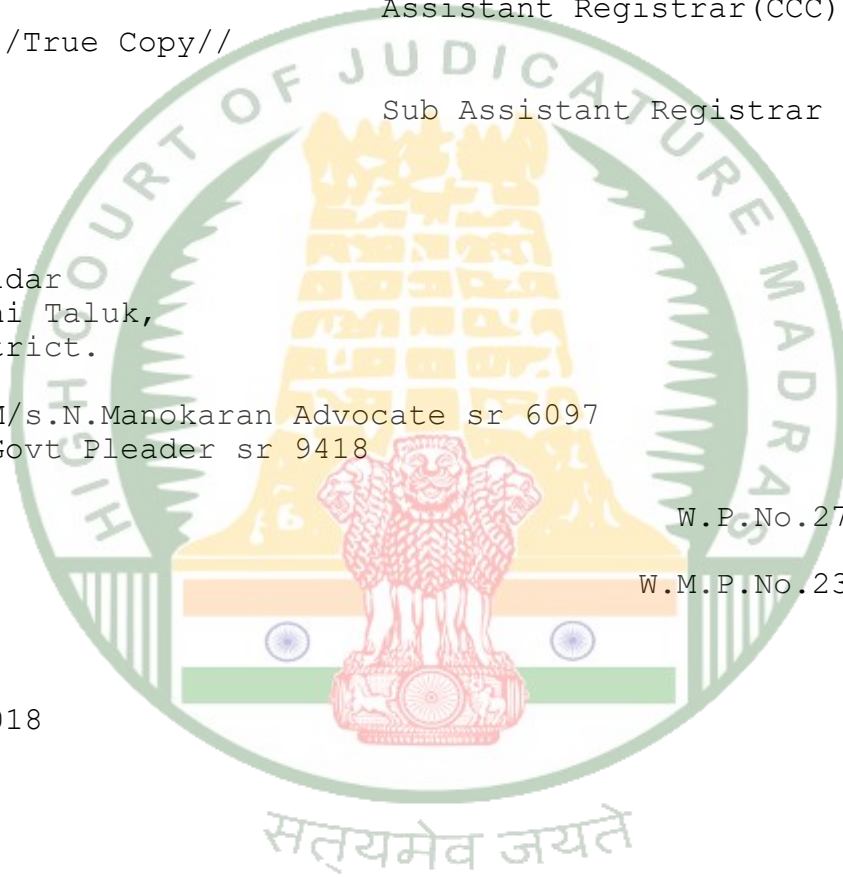
LS/gsp
To

The Tahsildar
Modakurichi Taluk,
Erode District.

+1 cc to M/s.N.Manokaran Advocate sr 6097
+1 cc to Govt Pleader sr 9418

W.P.No.27153 of 2016
and
W.M.P.No.23322 of 2016

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