

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2018

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos.2852 of 2012 and 6165 of 2018
M.P.No.2 of 2012 and WMP.Nos.7602 of 2018

W.P.No.2852 of 2012

S.Veerasamy

... Petitioner

Vs.

1.The Commissioner,
Land Survey and Settlement Office,
Chepauk, Chennai-600 005.

2.The District Collector,
Namakkal District.

3.The District Revenue Officer,
Namakkal District.

4.The Revenue Divisional Officer,
Thiruchengode,
Namakkal District.

5.The Block Development Officer,
Paramathi, Vellore District,
Namakkal District.

6.The Tahsildar,
Revenue, Paramathi,
Vellore Taluk,
Namakkal District.

7.K.S.Vivekanantham

... Respondents

W.P.No.6165 of 2018

A.Ramalingam

... Petitioner

Vs.

- 1.The District Collector,
Office of District Collectorate,
Namakkal.
- 2.The Superintendent of Police,
Namakkal District.
- 3.The Sub Divisional Executive Magistrate/
Revenue Divisional Officer,
Office of Revenue Divisional,
Tiruchengode, Namakkal District.
- 4.The Tahsildar,
Paramathi, Velur Taluk,
Paramathi, VVelur
- 5.The Assistant Director,
Panchayat Union,
Tiruchengode, Namakkal District.
- 6.Veerasamy. ... Respondents

Prayer in W.P.No.2852 of 2012 : Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for records relating to order of the 4th respondent dated 30.12.2010 made in Na.Ka.4163-2010-A and quash the same and consequently direct the respondents 1 to 6 not to survey and sub-divide the property in Survey No.388/6 at Kabilakurichi Village, Namakkal District and to cancel and remove the detailed mark in FMB Sketch which has been marked as per the order of the 4th respondent dated 30.12.2010 made in Na.Ka.No.4163-2010-A till the civil proceedings pending in A.S.No.114 of 2008 on the file of the Sub-Court, Namakkal attaining finality.

Prayer in W.P.No.6165 of 2018 : Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents 1 to 5 to take appropriate action against the 6th respondent, who encroach upon the Government Poromboke land in Survey No.388/6, situated at Kabilar Kurichi Village, Paramathi Vellore, Namakkal District by considering petitioner's representation dated 02.03.2018 and 12.03.2018.

For Petitioner

W.P.No.2852 of 2012 : Mr.N.Mohan
for Mr.R.Thiagarajan

W.P.No.6165 of 2018 : Mr.R.Marudhachalamurthy

For Respondents

In W.P.2852 of 2012 : Mr.R.Udhaya Kumar
Addl. Govt. Pleader for R1 to R6
Mr.M.K.Bhoopathy Rajan for R7

In W.P.No.6165 of 2018: Mr.R.Udhaya Kumar
Addl. Govt. Pleader for R1 to R5

Mr.N.Mohan
for Mr.R.Thiagarajan for R6

C O M M O N O R D E R

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

By consent, both the writ petitions are disposed of by this common order, as the points urged and to be adjudicated are inter-wined.

W.P.No.6165 of 2018

2. The petitioner claims that there is a Sarkar Poromboke Land situated in S.No.388/6 in Kabilar Kurichi Village, Paramathi Vellore, Namakkal District, in which there is a pathway, which is in existence for quite long time and it is being used by villagers for several decades. Grievance expressed by the petitioner is that some persons, under the leadership of the sixth respondent, had tried to put up construction in the form of temple, right across the said pathway and in this regard, representations were submitted in person as well as through post, but it failed to evoke any kind of response. Hence, the petitioner came forward to file this writ petition praying for appropriate direction, directing the respondents 1 to 5 to take action against the sixth respondent, who encroached upon the Government Poromboke land in S.No.388/6 by considering and disposing of his representations dated 02.03.2018 and 12.03.2018.

3. The Writ Petition was entertained and notice were ordered on 19.03.2018.

4. The fourth respondent has filed a counter affidavit stating among other things that three temples were located in S.No.388/6 at the time of Natham Settlement Survey and the sixth respondent did not make any encroachment in the said survey number and steps are being taken to set right the dilapidated Maduraiveeran Temple and all the three temples are located in Natham lands for more than 60 years and that the writ petitioner and his brother own lands in S.No.388/6, which lies on the eastern side of the lands in S.No.388/6 and there is no hindrance to the public on account of construction of

Maduraiveeran temple and therefore, prayed for dismissal of the writ petition.

5. The sixth respondent has filed a counter affidavit contending that S.No.388/6 is classified as "Kovil Poromboke" [Temple Poromboke] in village Adangal, wherein their family deities Meenakshiamman, Madurai Veeran and Pukkarandi are there and in the eastern side of the temple, the petitioner's family and his cousin brother's family constructed houses which are very next to Meenakshiamman Temple. The sixth respondent further stated in the counter affidavit that they had put up a thatched shed and they have been using the pathway in S.No.388/6 for time immemorial and the petitioner along with others had filed a Suit for Declaration for declaring their rights in O.S.No.446 of 2004 on the file of the District Munsif Court, Paramathi and it was dismissed and the appeal filed by them in A.S.No.114 of 2008 on the file of the Sub-Court, Namakkal also came to dismissed and as such, the claim of the writ petitioner is wholly unsustainable. It is further stated by the sixth respondent that as per the report of the Jurisdictional Village Administrative Officer, the pathway is located in S.No.388/6 and the order dated 17.09.2010 passed in W.P.No.21227 of 2010 filed by one K.S.Vivekananthan, cannot be acted upon for the reason that the sixth respondent have not been arrayed as the party and the endeavour of the petitioner is to give trouble to the sixth respondent on account of the fact that he was unsuccessful in the civil proceedings and prayed for dismissal of the writ petition.

W.P.No.2852 of 2012

6. The sixth respondent in W.P.No.6165 of 2018 is the writ petitioner and apart from taking the very same stand taken by him in the counter affidavit filed in W.P.No.6165 of 2018, it is contended by him that based on the order dated 17.09.2010 made in W.P.No.21227 of 2010, the fourth respondent/Tahsildar, vide communication dated 02.12.2010 addressed to the second respondent, has granted permission to the seventh respondent to put up a concrete road in S.No.388/6 with a further direction to record the same as pathway and it was also confirmed by the fourth respondent, vide impugned communication dated 30.12.2010. It is the stand of the writ petitioner that before passing the order, neither the sixth respondent nor the fourth respondent has afforded any opportunity whatsoever to the petitioner and prays for interference.

7. The learned counsel appearing for the petitioner in W.P.No.2852 of 2012 has also drawn the attention of this Court to the typed set of documents filed in support of the writ petition and would submit that the petitioner in W.P.No.6165 of 2018 is guilty of suppression of material fact as to the dismissal of the Suit in O.S.No.446 of 2004 on the file of the

District Munsif Court, Paramathi, as well as A.S.No.114 of 2008 on the Sub-Court, Namakkal and contrary to the stand taken in the civil proceedings, has taken a contra stand as if the lands in S.No.388/6 is classified as Sarkar Poromboke and as per the stand of the fourth respondent, it is not so and would further urge that since the petitioner has failed to approach the Court with clean hands, the writ petition deserves dismissal with exemplary costs and since the impugned order passed by the Tahsildar as well as the Revenue Divisional Officer came to be passed behind the back of the petitioner and without affording any opportunity whatsoever to the petitioner, prays for quashment of the impugned orders.

8. This Court has considered the rival submissions and also perused the entire materials placed before it.

9. The petitioner in W.P.No.6165 of 2018 along with 10 others had filed O.S.No.446 of 2004 against the petitioner in W.P.No.2852 of 2012 and 8 others praying for a declaration of his Easmentary rights in respect of XY- Cart Track and AB pathway in S.No.388/6. A perusal of the plaint would disclose that the plaintiffs therein took a stand that the lands in S.No.388/6 belong to the defendants and as per the rough plan, XY is a 12 feet Cart Track and it is in existence for 70 years and the said Cart Track is being used by the plaintiffs predecessor in title and the plaintiffs and as such, they have got Easmentary right by prescription and also Easement by Grant. The Court of District Munsif, Paramathi, after framing necessary issues, had recorded a finding that the plaintiffs are entitled to use pathway AB and not XY and decreed the Suit partly. The plaintiffs, which include the petitioner in W.P.No.6165 of 2018, aggrieved by the portion of the decree, in which their claim has been negatived, filed an appeal in A.S.No.114 of 2008 on the file of the Sub-Court, Namakkal and the said Appeal Suit was also dismissed, vide judgement and decree dated 27.10.2017 and so far, no further challenge has been made by filing a Second Appeal.

10. In the considered opinion of the Court, the findings rendered by the Trial Court and the Lower Appellate Court in O.S.No.446 of 2004 and A.S.No.114 of 2008 respectively would have a definite bearing upon the merits of the case projected by the petitioner in W.P.No.6165 of 2018 and however, the said fact has been totally suppressed in the affidavit filed in support of W.P.No.6165 of 2018. Curiously, the petitioner in W.P.No.6165 of 2018 took a stand that the land in S.No.388/6 is classified as "Sarkar Poromboke" and whereas in the judgement and decree in O.S.No.446 of 2004, in which he was arrayed as a party, the Trial Court has recorded a finding that no revenue record has been produced to show that there was a pathway exists on the said land in question.

11. The fourth respondent also, in the counter affidavit, took a stand that at the time of Natham Settlement Survey, the temples are located in S.No.388/6 and Maduraiveeran Temple and Meenakshiamman temple are situated in S.No.388/6 for more than 60 years and the sixth respondent has taken steps to reconstruct the Maduraiveeran Temple admeasuring 11 x 11 Sq.Ft., and also no objection has been received. In the light of the findings recorded by the District Munsif cum Judicial Magistrate Court, Paramathi in O.S.No.446 of 2004, vide judgement and decree dated 10.11.2008, as confirmed by the Lower Appellate Court viz., Sub-Court, Namakkal in A.S.No.114 of 2008, vide judgement and decree dated 27.10.2017, the stand of the writ petitioner in W.P.No.6165 of 2018 is wholly unsustainable. As already pointed out, the petitioner in W.P.No.6165 of 2018 has suppressed the fact of civil proceedings in the affidavit filed in support of the writ petition and as such, the petitioner is not entitled to get any equity or indulgence from this Court and therefore, this Court is of the view that W.P.No.6165 of 2018 deserves dismissal.

12. In W.P.No.2852 of 2012, the impugned orders were came to be passed by the respondents 4 and 6 based upon the order dated 17.09.2010 made in W.P.No.21227 of 2010 and admittedly, the petitioner and other defendants in O.S.No.446 of 2004 have not been arrayed as parties and this Court is also having bonafide as to the claim of the writ petitioner in W.P.No.21227 of 2010, who is also arrayed as seventh respondent in W.P.No.2852 of 2012 and that apart, if an opportunity was afforded to the writ petitioner, he would have been in a position to produce materials, especially the judgement and decree made in O.S.No.446 of 2004 on the file of the District Munsif Court, Paramathi and the judgement and decree made in A.S.No.114 of 2008 on the file of the Sub-Court, Namakkal, which would have a bearing upon the lands in S.No.388/6.

13. In the considered opinion of the Court, the impugned orders are passed per se in violation of the principles of natural justice and therefore, the said orders warrant interference.

14. In the result,

(i) W.P.No.6165 of 2018 is dismissed. However, this Court, taking into consideration that the petitioner is hailing from rural background and he was also one of the plaintiffs in the civil proceedings, is not inclined to impose costs. Consequently, connected miscellaneous petition is dismissed.

(ii) W.P.No.2852 of 2012 is partly allowed and the impugned order of the fourth respondent dated 30.12.2010 in Na.Ka.No.4163-2010-A is set aside and the matter is remanded to

the sixth respondent, who shall issue notice to the petitioner as well as the seventh respondent and after affording them reasonable opportunity of hearing, shall consider the same along with response, if any received and dispose of the same on merits and in accordance with law and pass appropriate orders within a period of ten weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner as well as the seventh respondent. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

jvm

To

- 1.The Commissioner,
Land Survey and Settlement Office,
Chepauk, Chennai-600 005.
- 2.The District Collector,
Namakkal District.
- 3.The District Revenue Officer,
Namakkal District.
- 4.The Revenue Divisional Officer,
Thiruchengode,
Namakkal District.
- 5.The Block Development Officer,
Paramathi, Velur District,
Namakkal District.
- 6.The Tahsildar,
Revenue, Paramathi,
Velur Taluk, Namakkal District.
- 7.The Superintendent of Police,
Namakkal District.
- 8.The Assistant Director,
Panchayat Union,
Tiruchengode, Namakkal District.

- + 1 cc to M/s. M.K. Bhoopathy Raja, Advocate SR.36752
- + 1 cc to M/s. R. Thiagarajan, Advocate 37093
- + 1 cc to M/s. R. Marudhchlamurthy, Advocate Sr.37101
- + 1 cc to the Government Pleader Sr.37509

W.P.Nos.2852 of 2012 and 6165 of 2018

MP(CO)

EU(28/06/2018)