

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.08.2018

CORAM

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

W.P.No.8081 of 2016
and
W.M.P.No.7195 of 2016

V.Palaniappan

..Petitioner

vs

- 1.The District Collector,
Namakkal District,
Namakkal.
2. The Revenue Divisional Officer,
Tiruchengode,
Namakkal District.
- 3.The Tahsildar,
Paramathivelur Taluk,
Namakkal District.
- 4.The Superintendent of Police,
Namakkal District,
Namakkal.
- 5.The Inspector of Police,
Nallur Police Station,
Paramathivelur Taluk,
Namakkal District.

6.M.Ponnusamy

7.P.P.Dhanaraj

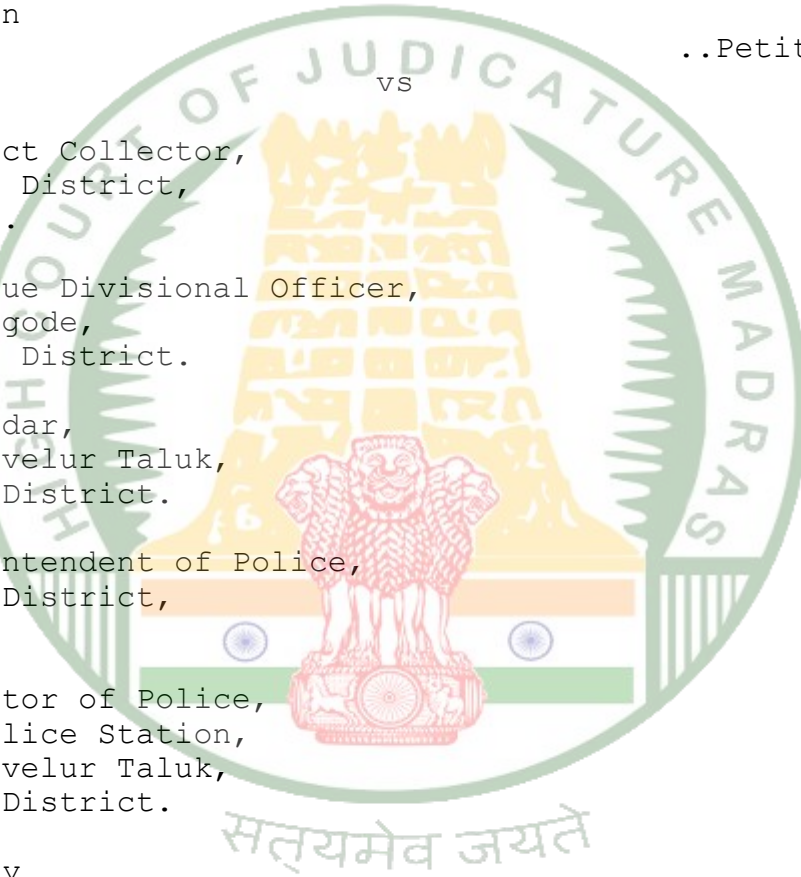
8.N.Chandrasekaran

9.P.Murugan

10.M.Selvaraj

11.Nallannan

12.S.Saravanan



WEB COPY

13.Sathya Velu @ S.Velusamy

14.D.Paramasivam

15.Irattai Ilai P.Ponnusamy

16.N.Saravanan

(R16 is impleaded as per order dated
02/06/2016 in WMP.No.12529/2016
in W.P.No.8081 of 2016)

..Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a writ of Mandamus, forbearing the respondents from interfering with the petitioner's possession and enjoyment of the property situate in Survey No.19/4, Maniyanur Village, Paramathyvelur Taluk, Namakkal District.

For Petitioner : Mr.P.Valliappan

For Respondents : Mr. D.Ragu
Government Advocate for R1 to R5

: Ms.S.Vasavi Sridevi for R6 to R10

: Mr.S.Thangavel for R16

: No appearance for R11 to R15

O R D E R

The relief sought for in this writ petition is to forbear the respondents from interfering with the petitioner's possession and enjoyment of the property situated in Survey No.19/4, Maniyanur Village, Paramathyvelur Taluk, Namakkal District.

2.The learned counsel appearing on behalf of the writ petitioner states that the property situated in Survey No.19/4, Maniyanur Village, Paramathyvelur Taluk, Namakkal District belongs to the writ petitioner and three others viz. S.Ramalingam, V.Subbarayan and R.V.Palaniappan and they have purchased the said land by way of a sale deed dated 22.05.1985. The said lands measuring an extent of (2 ½) cents and is classified as a Grama Natham. The petitioner's along with the other three persons have purchased the said land from one

Mr. Annamalai and others and from the date of purchase, the petitioner is in possession and enjoyment of the said property. In respect of the said land, a patta also has been issued and the patta was issued only in recognition of the pre-existing right and therefore, the writ petitioner is entitled for the grant of injunction as such sought for in the present writ petition.

3. The 6th respondent, on account of certain personal enmity, filed a writ petition in W.P.No.27261 of 2014 to forbear the respondents 1, 2 and 3 herein, from permitting one Thangarasu and his men to open shops in the aforesaid survey number and other survey numbers 18/3, 18/4, 18/5, 18/6, 18/7, 18/8, 18/11, 18/12, 18/13 and 18/14, Maniyanur Village, M.Kandhampalayam Taluk, Namakkal District. However, the writ petitioner was not a party to the said writ petition and the writ petition was dismissed by this Court on 22.07.2015.

4. The learned counsel for the petitioner states that against the order of dismissal, a writ appeal has been filed and a notice was ordered by the Hon'ble Division Bench and there is no interim order. Already a Civil Suit in O.S.No.122/2008 is pending and therefore, the very writ petition filed by the 6th respondent is not maintainable. The learned counsel for the petitioner is of an opinion that the property described in the present writ petition belongs to the writ petitioner is no way connected with the other properties, which all are the subject matters in the writ petition and the writ appeal. Therefore, the respondents cannot interfere with the peaceful possession and enjoyment of the property now under the possession and enjoyment of the writ petitioner. Further, it is contended that the property has already been classified as Grama Natham and even the official respondents cannot disturb the possession of the writ petitioner and if at all, any action is to be taken, the same shall be taken only in accordance with the procedures as contemplated under law. Thus, the writ petition deserves to be considered.

5. The learned Government Advocate appearing on behalf of the official respondents 1 to 5 opposed the contention by stating that the land described in the present writ petition has been classified as Grama Natham and the Government has got every right to interfere with the property by following the procedures as contemplated under law. It is contended by the learned Government Advocate that the conditions stipulated in the patta has been violated by the writ petitioner and therefore, the official respondents have got every right to cancel the patta and initiate all further actions. In respect of cancellation of patta, actions are already initiated and a notice was served to the writ petitioner, seeking his explanations. In the event of

issuing any such notice, it is for the writ petitioner to submit his explanation/objections in respect of the show cause notice issued.

6.The learned counsel for the writ petitioner disputes the fact that a show cause notice was issued to the writ petitioner in respect of the property described in the present writ petition. However, these facts are to be ascertained by the official respondents and if any action is already taken, it is left open to the writ petitioner to defend his case before the competent authorities in the manner known to law.

7.However, this Court is of an opinion that the relief as such sought for to forbear the respondents from interfering the petitioner's possession and enjoyment of the property cannot be granted in view of the fact that the facts now presented before this Court are complex in nature and such complex facts and circumstances arising on account of property disputes can never be adjudicated in a writ proceedings under Article 226 of the Constitution of India.

8.The 5th respondent/Inspector of Police also filed a counter affidavit on 30th September 2016, which reads as follows:

"2) I Submit that on 19.08.2015 at about 7.00 A.M., A.Gobinath, Village Administrative Officer, of Maniyanur Village, Paramathi Vellur Taluk, Namakkal District appeared before the Inspector of Police, Nallur P.S., and preferred a written complaint. In the complaint, the complainant alleged that the lands bearing S.Nos.18/3, 4, 5, 6, 7 and 8 and 11, 12, 13 and 14 are Grama Natham and situated at M.Kandampalayam. The persons belonging to Mudaliyar community obtained Free Pattas to the lands, constructed shops and enjoying the lands by feasing out to others. Under these circumstances people belonging to Kongu Velalar Community objected the leasing out of the above lands after constructing the shops by the Mudaliyar community people. In view of these disputes between the Mudaliyar community people Civil Suit filed by the Mudaliyar Community people before the District Munsif Cum Judicial Magistrate Court, Paramthi and the same is pending before the Court for adjudication. At this juncture, the people belonging to Mudaliyar Community that on 19.08.2015 at about 5.30 A.M., opened the locked shops said above telling that the case instituted before the High Court of Judicature at Madras was disposed in favour of them. The people belonging to Kongu Velalar Community numbering 50 learning the opening of the locked shops by the

Mudaliyar Community people objected the opening by telling that the shops shall not be opened till the final adjudication. The complainant learning the above development through his Village Assistant, inspected the place of occurrence, apprehending the possibility of communal clashes between these community people which would likely to cause breach of peace or disturb the public tranquillity.

3) I submit that the then Inspector of Police, Nallur Police Station registered a case in Nallur P.S.Cri.No.143/2015 u/s 107 of Cr.P.C.against the 10 persons belonging to Mudaliyar Community as "A" party and the 10 persons belonging to Kongu Velalar Community as "B" parties and forwarded the F.I.R.along with the complaint to the Revenue Divisional officer, Tiruchengode who is the Executive Sub Divisional Magistrate having jurisdiction to proceed further in this matter.

4) I submit that the Executive Sub.Divisional Magistrate, Tiruchengode after hearing the contention of the rival parties, considering their requisition to submit their reply to the case, that on 25.08.2015 passed an interim order u/s.116(3) of Cr.P.C.directing them to execute an Interim Bond and the same was obtained by the Executive Sub.Divisional Magistrate, Tiruchengode.

5) I submit that the petitioner is arrayed as No.1 in Cri.No.143/2015 in "A" party, and the Respondent No.6 is No.4, R7 is No.1, R8 is No.2, R9 is No.3, R10 is No.5, R11 is No.6, R12 is No.7, R13 is No.8, R14 is No.9, R15 is No.10 in "B" party in Cri.No.143/2015 said above."

9.In view of the submissions and the counter affidavit filed by the official respondents, this Court is of an opinion that the respective parties have to redress their grievances before the competent Civil Court of Law in view of the fact that various disputed questions of facts are involved in the present case and such disputes cannot be resolved in a writ jurisdiction. If the official respondents 1 to 3 wishes to initiate any action in respect of the property, they are bound to verify the revenue records and thereafter, initiate appropriate action by following the procedures as contemplated under law. In other words, an opportunity is to be provided to all the parties before initiating any coercive actions against the persons concerned.

10. In this view of the matter, the relief as such sought for cannot be granted and accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

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To

1. The District Collector,
Namakkal District,
Namakkal.
2. The Revenue Divisional Officer,
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Namakkal District.
3. The Tahsildar,
Paramathivelur Taluk,
Namakkal District.
4. The Superintendent of Police,
Namakkal District,
Namakkal.
5. The Inspector of Police,
Nallur Police Station,
Paramathivelur Taluk,
Namakkal District.

+1cc to Mr.S. Thangavel, Advocate SR.No.57329

+1cc to Mr.P. Valliappan, Advocate SR.No.57360

+1cc to Government Pleader SR.No.57633

W.P.No.8081 of 2016

GMV (06/09/2018)