

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.11.2018

CORAM

THE HON'BLE MR JUSTICE M. VENUGOPAL
AND
THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

W.P.No.28718 of 2017

M. Selvam

... Petitioner

Vs

1. The District Collector,
Thiruvallur District,
Thiruvallur.
2. The Revenue Divisional Officer,
Ambattur, Chennai - 600 053
3. The Tahsildar,
Thiruvotriyur,
Chennai - 600 019
4. The Special Tahsildar,
Village Natham Landtax Scheme,
Ambattur,
Chennai-53
5. The Zonal Officer,
Zone-3,
Chennai Corporation,
Madhavaram,
Chennai - 60
6. The President,
Kirama Munnetra Nalla Sangam,
No.9, Peruaml Koil Street,
Chinnasekkadu, Manali,
Chennai - 600 068

Respondents

सत्यमेव जयते
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Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Mandamus directing the Respondents 1 to 5 to remove and demolish the encroachment of Mariamman Temple construction in New Survey No.84/2 and S.No.84/4, Perumal Koil Street , Chinnasekkadu, Manali, Madhavaram Taluk, Thiruvallur District.

For petitioner : M/s S. Gunasekaran &
P. Kamalhasan

For R.1 to R.4 : Mr.S.N. Parthasarathy
Govt. Advocate

For R.5 : Mr.A. Nagarajan
Standing Counsel (Corpn)

For R.6 : Mr.K. Venkatramani
Senior Counsel for
Mr.S. Srinivasan

ORDER

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

The Petitioner has filed the Writ Petition seeking for issuance of a Writ of Mandamus directing the Respondents 1 to 5 to remove and demolish the encroachment of Mariamman Temple construction in New Survey No.84/2 and S.No.84/4, Perumal Koil Street , Chinnasekkadu, Manali, Madhavaram Taluk, Thiruvallur District.

2. Heard both sides.

3. According to the Petitioner, his family and his ancestors own and possess the land measuring to an extent of 6042 sq.ft in New Survey No.84/3, Old Survey No.9/6, No.49, Perumal Koil Street, Chinnasekkadu, Manali, Madhavaram Taluk, Thiruvallur District for more than four decades. In fact, the afore stated property was settled in his name as per registered Settlement Deed No.2045/2044 dated 12.04.2004 on the file of Sub Registrar, Thiruvotriyur. He had obtained a planning permission by submitting proper plan to Panchayat and obtained permission as per Proceedings in Na.Ka.No.145/2004 dated 14.06.2004 and constructed a building. Later patta was obtained from the Special Tahsildar, Village Natham Landtax Scheme, Ambattur, Chennai-53/the Fourth Respondent herein.

4. The prime stand of the Petitioner is that the passage for his premises was in New Survey No.84/2 and there was no 'ingress' for his property, which is also public pathway. There was a temple existed in New Survey No.84/1 called Mariyamman

Temple, situated opposite to his premises. All of a sudden, the Kirama Munnetra Nalla Sangam, the Sixth Respondent herein and some third persons proposed to extend the Mariyamman Temple and initiated steps and laid concrete basement, partly completed the construction for the extension in New Survey No.84/2 which is a public road. The boundaries of the Temple and passage were not properly bifurcated.

5. The grievance of the Petitioner is that they had encroached the public passage and in this regard, he had addressed representation before the Respondents and based on his representation, the Revenue Divisional Officer, Ambattur/the Second Respondent herein had directed the Zonal Officer, Zone-3, Chennai Corporation, Madhavaram/the Fifth Respondent herein to survey and land. The Fifth Respondent and with Respondents 3 and 4 surveyed the land on 06.10.2016 and furnished report that the land in New Survey No.84/2 was a public passage and it is the only ingress to the Petitioner's house and that the Sixth Respondent Sangam cannot encroach the public pathway.

6. Furthermore, the Petitioner gave a representation to the Respondents on 28.10.2016 to remove the encroachment and unauthorised, illegal construction put up by the Sixth Respondent Sangam in New Survey No.84/2 near the Perumal Koil Street, Chinnasekkadu, Manali, Madhavaram Taluk, Thiruvallur District. Since no action was taken in the matter, the petitioner filed Writ Petition in W.P.No.40696 of 2016 before this Court and this Court on 21.11.2016 at Paragraph Nos.2 and 3 had observed the following and disposed of the Writ Petition:-

" 2. Learned Government Pleader states that some action has already been taken and remaining action required to clear the common path will be done within a maximum period of one month from today.

3. We take the aforesaid statement on record and the respondent/authority shall remain bound by the same."

7. At this stage, the Learned Counsel for the Petitioner brings it to the notice of this Court that subsequent to the order passed by this Court in the above said Writ Petition, the Respondents 1 to 4 demolished some portion of the Compound Wall of the Temple and left large portion without any destruction. The Sixth Respondent Sangam and third persons with full swing are putting up the construction of extension to the temple in S.No.84/2 which is a public pathway and S.No.84/4 which is government poramboke land which has been used by Metro water.

8. The Learned counsel for the Petitioner proceeds to

point out that except S.No.84/3 which is his house, all other Survey Numbers were encroached by the Sixth Respondent Sangam. Only through RTI, the Petitioner came to know that the Temple was constructed without getting any prior permission from Corporation. Since the Sixth Respondent and some third persons have encroached the land and making an all out endeavours to complete the construction, the Petitioner has filed the present Writ Petition seeking to issue a Writ of Mandamus to direct the Respondents 1 to 5 to remove and demolish the encroachment of Mariamman Temple construction in New Survey No.84/2 and S.No.84/4, Perumal Koil Street, Chinnasekkadu, Manali, Madhavaram Taluk, Thiruvallur District.

9. Per contra, it is the submission of the Learned Government Advocate that Old No.9/6 measuring to an extent of 2.25.0 Hectares of Chinnasekkadu Village was Government Poramboke-Gramanatham and that several occupiers were enjoying the land on their own by constructing houses and as it is a 'village site', naturally Roads, Streets, Temples, Wells and other type of usages are existing in the filed and Public are using it as a communal property. Furthermore, no patta was granted to the individuals. Moreover, from the year 2011, Natham Settlement Scheme was introduced in the village and the petitioner and others got patta for their occupied lands in Gramanatham, from the Special Tahsildar, Village Natham Landtax Scheme, Ambattur, Chennai/the Fourth Respondent herein. In fact, the Petitioner was granted Gramanatham patta for the piece of land in Old Survey No.9/6 part, New S.No.84/3-to an extent of 00.55.0 sq.mtrs in the year 2012.

10. The Learned Government Advocate appearing for the Respondents 1 to 5 points out that as per the Rules of Natham Settlement, Streets, Temples, Parks, Roads, Channels and other communal lands has to be kept 'as it is' and therefore, the Temple land in Old S.No.9/6 part which is abutting the Petitioner's land was treated as Government poramboke/A/M, Mariamman Temple and registered as New S.No.84/1, 0.0230 sq.mtrs and New S.No.84/2 to an extent of 0.00.15 sq.mtrs which was newly subdivided as passage.

11. The Learned Government Advocate proceeds to come out with plea that in the Petitioner's Settlement Deed, no pathway was shown by the Settlor to the Settlee but Natham Settlement Authorities have newly demarcated 2.00 metre width and 7.8 metres length land as new S.No.84/2 and registered as Government Poramboke-'Sandhu' passage. Since 'Sandhu' is a common passage everybody in the community can use the passage to enter the Temple and exit from there. The Petitioner is also using the passage without any hindrance as on date to enter and exit from his house.

12. The Learned Government Advocate also brings to the notice of this Court that the Settlor himself has no document to prove his right over the property and the Settlee has simply settled the property without having any right over the property. No patta was granted in favour of the Settlor or Settlee before the Natham Settlement Scheme. However, the Petitioner by the strength of this document, had occupied the land and constructed his house and there was no survey number as 84/3 or 84/2 in existence as claimed by the Petitioner at the time of registering the document No.2045/2004 besides the Grama Natham S.No.9/6 along was in vogue.

13. The Learned Government Advocate takes a categorical plea that even before the occupation of the Writ Petitioner on the land, in question, Arulmigu Mariamman Temple was in existence in S.No.9/6, Gramanathan, abutting the Petitioner's land and during Natham Settlement, Old S.No.9/6 was divided into New Survey Numbers and Gramanatham pattas were issued to the occupants of the Gramanatham lands and Streets, Roads, Temples and other places were registered as it is as per the ground details.

14. The sum and substance of the contention advanced on behalf of the Respondents 1 to 5 is that the new Survey Number 84/2 is not at all a public road as claimed by the Petitioner and it is only a common passage allowed by the Grama Natham authorities for the use of the Petitioner as well as to the other people who are coming to the Temple.

15. The Learned Government Advocate for the Respondents 1 to 5 submits that this Court in WP No.40696 of 2016 had directed the Respondents to clear the common pathway within a stipulated time of one month. Accordingly, the eviction process was continued and on 22.02.2017, the Tahsildar, Thiruvottiyur/ the Third Respondent herein in the presence of Revenue Divisional Officer, Ambattur, Special Tahsildar (Natham Settlement), Ambattur and with police personnel cleared the obstructions in the new S.No.84/2 and (S.No.84/2) passage was made without any hindrances and that the Petitioner is using the passage till date without nay hindrances whatsoever.

16. In this connection, the Learned Government Advocate for the Respondents 1 to 5 contends that the Temple Devotees have already constructed an 'Entrance Arch' and small pillar stand (3'x3' size) in nearby New S.No.84/4, (Old S.No.9/6) which is Natham Vacant Land, which no way affected the pathway in S.No.84/2 which is claimed by the Petitioner for his use. In fact, the Petitioner is having another access in New S.No.84/5 in Southern side of New S.No.84/4 which connects S.No.84/2 on

the eastern side.

17. The Learned Government Advocate puts forward an argument that the Petitioner's averments in the Writ Petition cannot be entertained since it is a Gramanatham land and Temple and it cannot be considered as encroachment and that the present Writ Petition filed by the Petitioner is devoid of merits.

18. The Learned Senior Counsel appearing for the Fifth Respondent/Zonal Officer, Zone-3, Chennai Corporation submits that on receipt of the complaint from the Petitioner, site was inspected by the Assistant Executive Engineer, Unit-7, Zone-III and the Assistant Engineer, Division-29, Zone-III, Greater Chennai Corporation on 24.02.2017 and it came to light that the Sixth Respondent Sangam had nearly completed the construction of a Temple in the land, in question and only whitewashing and other minor works were pending. During the course of inspection, it was represented that the Sixth Respondent is the owner of the land and further gave a complaint stating that the Petitioner is putting up construction unauthorisedly.

19. The Learned Senior Counsel appearing for the Fifth Respondent points out that after inspection, a Stop Work Notice/Notice calling for Approved Plan under Sections 56 and 57 read with Section 85 of Tamil Nadu Country Planning Act, 1971 was issued on 27.02.2017 to the Sixth Respondent, who, on receipt of the notice, immediately stopped the work in the temple and also with a letter dated 14.11.2017 and reminder dated 20.11.2017 were addressed to the Tahildar, Thiruvottiur Taluk, with a request to furnish details of the land at Survey No.84/2 and 84/4 in order to take further action in this regard and soon after receiving reply from the Tahsildar, the Fifth Respondent will take necessary action.

20. Per contra, it is the submission of the Learned Senior Counsel appearing for the Sixth Respondent Sangam that originally there is a actual approach passage utilised by the Petitioner as well as the devotees of the Temple for several decades which runs towards west to east from the gate of the Petitioner's land connecting the road. The said actual approach passage will be very much convenient for the Petitioner for his usage, which had been continuously used by him other than the alleged approach passage claimed in Survey No.84/2 situated in between the temple lands in S.No.84/1 and also in 84/4.

21. At this stage, a perusal of the contents of the counter of the Sixth Respondent, latently and patently indicates that the pathway in question is not public pathway at any point of time and in fact, as against the order dated 21.11.2016 in WP

No.40696 of 2016 passed by this Court a Review Petition in S.R.No.12766-70 and CMP No.3453 of 2017 to condone the delay in filing the review petition was filed and the same is pending before this Court. Moreover, the Sixth Respondent had preferred an appeal before the appellate authority as against the order dated 26.10.2016 passed by the Assistant Director, Land Survey Department, District Collectorate Officer, Thiruvallur District and the same is pending as on date.

22. The other argument of the learned Senior Counsel for the Sixth Respondent Sangam is that the Petitioner is having another access for ingress and egress in S.No.84/5 and as on date there is no encroachment in S.No.84/2 as wrongly claimed by the Petitioner. Furthermore, the Petitioner has filed the present Writ Petition with malafide intention and in short, possession of the Temple 'Gramanatham' is wrongly construed as 'encroachment' by the Petitioner without any basis and valuable records. The Mariamman Temple and its appurtenances in Survey Nos.84/1 and 84/4 are in existence even prior to the occupation of the Petitioner in S.No.84/3.

23. On a careful consideration of respective contentions, in view of the divulged stand taken by the respective parties and also this Court, keeping in mind the attendant facts and circumstances of the instant case in an integral manner, is of the considered view that the Petitioner in his Writ Petition has categorically averred that his premises was in new Survey No.84/2 and there was no 'Ingress' for his approach which is also a public pathway.

24. Admittedly, as against the order dated 26.10.2016 of the Assistant Director, Land Survey Department, District Collectorate Office, Thiruvallur District, who had held that there is no alternative approach passage for the Petitioner in S.No84/3 other than in S.No.84/2 and an appeal was preferred by the Sixth Respondent Sangam before the Commissioner, Land Survey, Landtax Scheme, Chennai-5 and the same is pending as on date. The appeal preferred by the Sixth Respondent is not yet disposed of, which fact is not disputed by the parties to the present litigation. Therefore, this Court on an entire conspectus factual and legal aspects of the case in an integrated fashion comes to an inescapable conclusion that the Petitioner's remedy in respect of his plea of not having an 'Ingress' for his property, which is also a public pathway is a clear case of 'Easementary' right claim and for this, the proper course for the Petitioner is to approach a competent civil forum for redressal of his grievance, if he so desires.

25. Viewed in that perspective, this Court holds that disputed questions of fact and where the issues pertain to

letting in of oral and documentary evidence, these things are not to be gone into in a Writ Petition. As such, this Court directs the Petitioner to approach the competent civil forum to establish his claim of 'Easementary' right in respect of the subject property and to seek appropriate remedy if he so desires/advises.

26. It is open to the Petitioner to file a Civil Suit and in the said suit, the Petitioner shall raise all factual and legal pleas and also to take advantage of the order passed by this Court in the Writ Petition and also any other order of the Concerned Authority at his command. The said suit shall be filed by the Petitioner within a period of two weeks from the date of receipt of a copy of this order. Liberty is granted to the Petitioner to seek an immediate relief by way of Interlocutory Application in the Civil Suit, to be filed by him, of course in the manner known to Law and in accordance with Law.

27. With the aforesaid observations, the Writ Petition is disposed of No costs.

Sd/-

Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

sr

To

1. The District Collector,
Thiruvallur District,
Thiruvallur.
2. The Revenue Divisional Officer,
Ambattur, Chennai - 600 053
3. The Tahsildar,
Thiruvotriyur,
Chennai - 600 019
4. The Special Tahsildar,
Village Natham Landtax Scheme,
Ambattur,
Chennai-53

5. The Zonal Officer,
Zone-3,
Chennai Corporation,
Madhavaram,
Chennai - 60

+1cc to Mr.S.Gunasekaran, Advocate SR.No.82706

+1cc to Mr.C.R.Dhasarathan, Advocate SR.No.8233

+1cc to Mr.A.Nagarajan Advocate SR.No.82313

W.P No.28718/2017

RR(CO)

GMV (28/12/2018)



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