



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 27.11.2018

CORAM:

THE HON'BLE Mr. JUSTICE R.SUBBIAH
AND
THE HON'BLE Mrs. JUSTICE R.THARANI

W.P. (MD) No. 20594 of 2017
and
W.M.P. (MD) Nos. 16889 & 16890 of 2017

E.Hakeem Raja ... Petitioner

Vs.

1.The Sub Collector,
Palani Taluk, Palani.

2.Arumugam

3.Ambika

4.Chandrasekaran

... Respondents

PRAYER: The petition filed under Article 226 of the Constitution of India, to issue a Writ of certiorari, to call for the records in Na.Ka.No.6550/17/A6, dated 12.09.2017 and quash the same.

For Petitioner : Mr.R.Subramaniam for
Mr.M.Saravanan

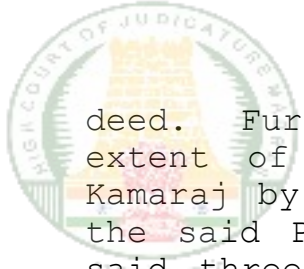
For Respondents : Mr.R.Sethuraman, Spl.G.P. for R1
Mr.D.Venkatesh for R2 to R4

ORDER

(Order of the Court was made by R.SUBBIAH, J.)

This Writ petition has been filed to quash the proceedings of the first respondent in Na.Ka.No.6550/17/A6, dated 12.09.2017.

2.One Shahul Hameed, who was the owner of a property measuring to an extent of 1579 1/2 sq.ft., had sold the said property to one Pichai Thewar by way of a registered sale deed dated 02.02.1989. Adjacent to the said property, one Chithirampillai was having a property to an extent of 120 sq.ft. The said Chithirampillai had filed a suit in O.S.No.1792 of 1979 against his brother namely, Paramasivam for easementary right. The said suit was decreed in favour of the said Chithirampillai and thereafter, he executed a sale deed in favour of one Mehraj, who in turn, had sold the property to the said Pichai Thewar by way of a registered sale



deed. Further, the said Pichaithewar purchased another land to an extent of 104 sq.ft from one Thukkaiyannapillai, Marimuthu and Kamaraj by way of a registered sale deed dated 26.08.1991. Thus, the said Pichaithewar had become the absolute owner of the above said three properties. The petitioner has purchased these three lands from the said Pichaithewar by way of a registered sale deed vide document No.996 of 2007 on the file of the District Registrar, Palani. After purchasing the said land, patta has also been issued in favour of the petitioner in Patta No.2490.

3. Whiles, when the petitioner made arrangement to survey his property, he found that the third respondent, who is the wife of the second respondent, had encroached some portion of his property measuring 1.5 x 66 sq.ft., which is a pathway. Hence, the petitioner asked the respondents 2 and 3 to remove such encroachment and filed a suit in O.S.No.159 of 2016 before the District Munsif Court, Palani against the second respondent for declaration and also for permanent injunction not to put up any construction in the suit property and the said suit is pending. The petitioner has also filed an application in I.A.No.714 of 2016 to appoint an Advocate Commissioner to survey the suit property with the help of a Village Administrative Officer and Town Surveyor. The said application was allowed and a report has also been filed by the Advocate Commissioner. In the mean time, the respondents 2 and 3 have tried to put up a fencing in the disputed pathway as if it is a common pathway.

4. The grievance of the petitioner is that he purchased the above said three properties including the disputed pathway. However, the respondents 2 to 4 have preferred a complaint before the first respondent stating that the petitioner has encroached the disputed pathway in Survey No.857/18. Hence, the first respondent sent a notice on 01.09.2017 to the petitioner. Therefore, the petitioner has also given reply to such notice. Without considering such reply, the first respondent has passed an order dated 12.09.2017 in Na.Ka.No.6550/17/A6, stating that the petitioner is the encroacher of the said pathway and hence, he has to repair the damaged portion of the compound wall and directed him to make necessary provision for rain and drainage water and also granted an injunction not to disturb the respondents 2 to 4. Challenging the same, the petitioner is before this Court.

5. The learned counsel for the petitioner submitted that the dispute between the petitioner and the respondents 2 to 4 is in respect of a pathway and in this regard, a suit in O.S.No.159 of 2016 is pending before the District Munsif Court, Palani. He also submitted that earlier, the said Chithirampillai had also filed a suit in O.S.No.552 of 1994 against Pichaithewar and a mandatory injunction for removing encroachment was granted in favour of Chithirampillai. However, the said decree was not executed by him, since the limitation for execution of the decree had expired. When the Civil Court was seized of the subject property, the first



respondent has no right or jurisdiction to interfere in the civil dispute between the private parties.

6. The learned Additional Government Pleader appearing for the first respondent by filing a counter affidavit on behalf of the first respondent submitted that the dispute between the petitioner and the respondents 2 to 4 involves communal problem and for keeping public peace and tranquility, the first respondent was necessary to interfere into this matter. He further submitted that the petitioner filed an application in I.A.No.713 of 2016 in O.S.No.159 of 2016 for granting injunction. However, the said application has been dismissed. As against which, the petitioner has filed C.M.A.No.7 of 2017 before the Sub Court, Palani and the same is still pending. Hence, in the absence of any interim injunction, the first respondent after conducting detailed enquiry, passed the present impugned order. Hence, he prayed for dismissal of this Writ petition.

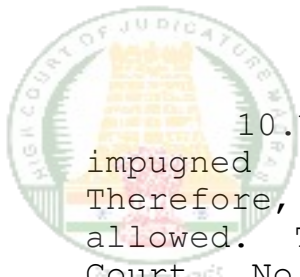
7. Heard the learned counsel for the petitioner, learned Additional Government Pleader appearing for the first respondent and the learned counsel appearing for the respondents 1 to 4.

8. Admittedly, the dispute between the petitioner and the respondents 2 to 4, is with regard to a pathway in Survey No.857/18 and a suit in O.S.No.159 of 2016 is pending before the District Munsif Court, Palani. In such a situation, the first respondent / District Collector has passed the impugned order dated 12.09.2017 observing that the petitioner is an encroacher of the said pathway and hence, he has to repair the damaged portion of the compound wall and directed him to make necessary provision for rain and drainage water and also granted an injunction not to disturb the respondents 2 to 4. When a civil suit is pending before the competent civil Court, the first respondent has no jurisdiction to pass the present impugned order. On that score, the impugned order is liable to be quashed.

9. Further, if there is likelihood of law and order problem in respect of the pathway in question, the first respondent is empowered to invoke Sections 145 and 147 of Cr.P.C., which read as follows:

"145. Joining or continuing in unlawful assembly, knowing it has been commanded to disperse.--Whoever joins or continues in an unlawful assembly, knowing that such unlawful assembly has been commanded in the manner prescribed by law to disperse, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

147. Punishment for rioting.--Whoever is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."



10. Without doing so, the first respondent has passed the impugned order dated 12.09.2017 without any jurisdiction. Therefore, the impugned order is set aside and the Writ petition is allowed. The parties shall work out their remedies before the Civil Court. No costs. Consequently, connected W.M.Ps. are closed.

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Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar (CS-III)

To

The Sub Collector,
Palani Taluk, Palani.

+1CC to Mr. M. Saravanan, Advocate, SR.No. 97298
+1CC to the Special Government Pleader SR.No. 97359

W.P. (MD) No. 20594 of 2017
27.11.2018

NBJ
ES/RSK/SAR 3/20.12.2018/4P/4C