

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2019

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH

WP. No.27066 of 2004
and
WP.MP.No.32958 of 2004

M.Aruchamy Gounder

..Petitioner

Vs

1. The District Collector
Coimbatore.
2. The Sub-Collector
Pollachi.
3. The Tahsildhar
Pollachi, Coimbatore District.
4. T.Kandasamy Chettiar (deceased)
5. Alukkammal
6. K.Sivasamy
7. K.Ganesh @ Aruchamy
8. Jothimani
9. Rathinam
- 10.Eswari
- 11.Saraswathi
- 12.Krishnaveni
- 13.Maheshwari

...Respondents

[R5 to R13 substituted as LR's in the place of R4 deceased,
as per the order of this Court dated 21.01.2006
made in WP.MP.No.29024 of 2005 in WP.No.27066 of 2004.]

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus, directing the respondents 1 & 2 to initiate action under the T.N.Land Encroachment Act, 1905 against the 4th respondent and evict him from his unauthorised occupation of a portion of the East-West Public Cart Track bearing S.F.No.232/3 in Kanjampatti Village, Pollachi Tk., Coimbatore District and restore the said Public Cart Track to its original width of 16 ft. and extent of 12 sq.mts within the time.

For Petitioner : Mr.T.M.Naveen
For Respondents: Mr.K.Rajendra Prasad, AGP
for R1 to R3
No Appearance, for RR4 to 13

ORDER

The prayer sought for in the Writ Petition is to evict the fourth respondent from his occupation of a Cart Track comprised in Survey No.232/3 in Kanjampatti Village, Pollachi Taluk, Coimbatore District and consequently, restore the Public Cart Track to its original width.

2. It is seen from the counter affidavit filed by the respondents 1 to 3 herein that the fourth respondent herein had already filed a suit in O.S.No.498 of 1998 before the District Munsif Court, Pollachi, seeking for the relief of declaration and permanent injunction of his title over the subject property and for consequential injunction. The said suit came to be decreed on 19.12.2002, as such, the subject property's title had been declared in favour of the fourth respondent. Hence, the prayer sought for in the present Writ Petition to vacate the fourth respondent from the subject property is not maintainable.

3. It is also submitted by the learned counsel for the petitioner that there is no clarity in the counter affidavit as to whether any appeal has been preferred from the original judgment and decree in O.S.No.498 of 1998. It is true that the counter affidavit states that the official respondents intended to file appeal against the above judgment and decree. The counter affidavit came to be filed on 14.12.2004 and though the matter was listed on various occasions, the respondents had not furnished the present status of the judgment and decree passed in O.S.No.498 of 1998. Since the Writ Petition is pending from the year 2004, this Court is not inclined to keep the matter pending any further, which act would cause serious prejudice to the parties.

4. It is needless to point out that in case the judgment and decree passed in O.S.No.498 of 1998 has been over-ruled or modified subsequently in the appeal, if any, the parties to the suit will be bound by the terms of such judgment and decree of the Appellate Court. As such, since the prayer sought for in the Writ Petition has already been dealt with and decided by the Civil Court, this Court does not intend to pass any orders. Hence, the Writ Petition stands dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

pvs

To

1. The District Collector, Coimbatore.
 2. The Sub-Collector, Pollachi.
 3. The Tahsildhar Pollachi, Coimbatore District.
- +lcc to Mr.KP.Jotheeswaran, Advocate SR.No.15631

WP. No.27066 of 2004

KS (CO)
GMY (23/03/2019)



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