



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2019

CORAM:

THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

W.P.NO.10469 OF 2018

AND

W.M.P.NO.12422 OF 2018

P.Sasikumar

... Petitioner

-vs-

1. The District Collector,
Namakkal District,
Namakkal.
2. The Superintendent of Police,
Namakkal District,
Namakkal.
3. The Inspector of Police,
Mohanur Police Station,
Namakkal District.
4. M.Kalyanasundaram.

... Respondents

Prayer:-

Writ Petition filed under Article 226 of Constitution of India, seeking for a Writ of Mandamus, directing the First to Third Respondents to consider the petitioner's representation dated 27.03.2018 and take action against the Fourth Respondent for obstructing the right of way formed in S.Nos.186/1A, 186/1B and 186/2 to reach A/m.Karupanna Swamy, Periya Swamy, and Nallayee Amman temples, Chinnathambipalayam, Kumaripalayam Village, Namakkal District in S.No.186/4 of Kumaripalayam Village, Namakkal District.

For Petitioner : Mr.Suganthan for
Mr.N.Manokaran

For Respondents: Mr.R.Venkatesh,
Government Advocate (for R1 to R3)
Mr.C.Jagadish (for R4)



O R D E R

Heard Mr.Suganthan, Learned Counsel appearing for the Petitioner, Mr.R.Venkatesh, Learned Government Advocate appearing for the First to Third Respondents and Mr.C.Jagadish, Learned Counsel for the Fourth Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition has been filed for a direction to the First to Third Respondents to consider the representation dated 27.03.2018 made by the Petitioner to take action against the Fourth Respondent for obstructing the right of way formed in Survey Nos. 186/1A, 186/1B and 186/2 to reach Arulmighu Karupanna Swamy, Periya Swamy, and Nallayee Amman Temples, Chinnathambipalayam, Kumaripalayam Village, Namakkal District in Survey No. 186/4 of Kumaripalayam Village, Namakkal District.

3. The First Respondent has filed Counter Affidavit dated 14.08.2018 stating that there is no marked foot path or cart track used by public in Survey Nos.186/1A, 186/1B and 186/2 of the Chinnathambipalayam Village in the field measurement book prepared under updating Registry Scheme for reaching the land in Survey No. 186/4 of that Village as claimed by the Petitioner. It is also explained that the land in Survey No. 186/4 is an extent measuring 5 cents of Government poramboke land as per the records and though there is a small Temple without any roof in existence, there has not been any worshipers for the last four years as there is no idol of any deity and there are only five small horse statues made of soil and brick clay, apart from the compound wall put up around the area. It is also brought to notice that enmity exists between the Fourth Respondent and his neighbouring land owner, viz., Navaladi, at whose instigation, the Petitioner is maliciously prosecuting this Writ Petition.

4. In the Counter Affidavit dated 21.09.2018 filed by the Fourth Respondent, who claims to be the owner of the land in Survey No. 186/1, 186/2, 186/3 and 186/4 of the aforesaid Village, the right of way through his properties to the Temple in Survey No. 186/4 of that Village has been denied, and according to him, the said Temple has been constructed by his father in the land belonging to him. It is also contended that the said Navaladi had instituted suit in O.S.No. 1605 of 2004 in the Additional District Munsif Court, Namakkal claiming the same relief of the right of way to Temple in Survey No. 186/4 through his land and that the same has been dismissed by judgment dated 31.10.2007 and confirmed in appeal in A.S. No. 91 of 2011 in the Additional District Court/FTC, Namakkal, which has attained finality. It is complained that the Petitioner has been set up



by the said Navaladi for re-agitating the same claim which has already been rejected by the Civil Court.

5. Having regard to the aforesaid rival contentions of the parties, it is evident that the matter involves various disputed questions of fact which require recording of evidence of the parties on their rival claims including ownership of the land in Survey No. 186/4, which could not be decided following summary procedure under Article 226 of the Constitution. That apart, the matter appears to have already been adjudicated by the Civil Court, and as such, it would not be open to the Petitioner to claim such relief by resorting to make a representation to the First to Third Respondents for the same.

6. In this context, it would be useful to refer to the dictum laid down by the Hon'ble Supreme Court of India in Director of Settlements, A.P. -vs- M.R.Apparao [(2002) 4 SCC 638], in which it has been held as follows:-

"17.One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the Court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus. "Mandamus" means a command. It differs from the writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any person, corporation, inferior courts or Government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by a statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition (Kalyan Singhv. State of U.P. [AIR 1962 SC 1183]). The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law...."



Applying the aforesaid principles to the facts of this case, viz-a-viz the cogent reasons assigned by the First Respondent in the Counter Affidavit for refusing to accede to the claim made by the Petitioner, there does not appear to be any justification for this Court to direct the Respondents to dispose the representation dated 27.03.2018 made by the Petitioner as sought in the Writ Petition. However, it is made clear that no view has been expressed by this Court on rival claims of ownership of the land in Survey No. 186/4 made by the First and Fourth Respondents and that question is left open to be decided in legal proceedings between them before the competent forum in accordance with law.

7. In the result, the Writ Petition is dismissed. No costs. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

rkp/vjt

To

1. The District Collector,
Namakkal District,
Namakkal.
2. The Superintendent of Police,
Namakkal District,
Namakkal.
3. The Inspector of Police,
Mohanur Police Station,
Namakkal District.

+lcc to Mr.N.Manokaran, Advocate, S.R.No.74255

+lcc to Mr.C.Jagadish, Advocate, S.R.No.74399

W.P.No.10469 of 2018
and W.M.P.No.12422 of 2018

SV(CO)
CS/13/01/2020