

IN THE HIGH COURT OF JUDICATURE AT MADRAS
JUDGMENT RESERVED ON : 23.01.2019
JUDGMENT PRONOUNCED ON : 14.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.VENUGOPAL
THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

W.P.No.6546 of 2016
and
W.M.P.No.5825 of 2016

R.Devanarayanan

Petitioner

Vs

1.The District Collector,
Erode District,
Erode.

2.The Commissioner,
Ammapettai Panchayat Union,
Ammapettai-638 311,
Erode District.

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution to issue a writ, order or direction in the nature of a Writ of Mandamus by directing the Respondents to remove the encroachment in the Petitioner's patta land in R.S.No.666/1 in Patlur Village, Anthiyur Taluk measuring 2.40 meters in the western side, 1.60 meters in the eastern side for the length of 58 meters in the East West and to relay the rough stone walls and the boundary stones.

For Petitioner : Mr.S.Krishnasamy

For Respondents : Mr.S.N.Parthasarathy
(Government Advocate)

O R D E R

The Petitioner has filed this Writ Petition, seeking for issuance of a Writ of Mandamus, directing the Respondents to remove the encroachment in the Petitioner's patta land in RS.No.666/1 in Patlur Village, Anthiyur Taluk, measuring an extent of 2.40 meters in the Western side, 1.60 meters in the Eastern side for the full length of 58 meters in the east to west and to relay the rough stone walls and the boundary stones.

2. Mr.S.Krishnasamy, Learned counsel appearing for the Petitioner would submit that the petitioner is the absolute owner of the Agricultural Punjai land, measuring to an extent of 75 cents in R.S.No.666/1 (Old No.171) in Patlur Village,

Anthiyur Taluk (then Bavani Taluk), Erode District by virtue of a Sale Deed dated 03.03.1992, bearing Document No.402 of 1992, registered in the Office of the Sub Registrar, Anthiyur. It is bounded on North by Cart Tract, comprised in R.S.No.436; East by the land in RS.No.666/2; South by the other land obtained under the family partition and the West by land in R.S.No.665. The cart track situated in the northern boundary is in Valluvar Natham Poramboke land and the said cart track is leading to Chinna Konamookkanur Village from Poosariyur. Common public are using the above said cart track for the past several decades. The width of the cart track is 20 feet.

3. Continuing further, he would submit that before 08.08.2012, the Union Council of Ammapettai Panchayat had decided to develop the said cart track into a gravel road from its common funds. Some of the persons, who are in enimical terms with the Petitioner, are taking steps to encroach upon the said land belonging to the Petitioner. Hence on 08.08.2012, the Petitioner sent a representation to the Block Development Officer (Village Panchayat), Ammapettai, with a request that the land situated in R.S.No.666/1 shall not be encroached under the guise of laying road in the said cart track. The said petition was received by the Block Development Officer on 09.08.2012.

4. In fact, the Petitioner is residing in his village, which is situated 2Kms., away from the land now in dispute. Before the incident, on the northern boundary of the Petitioner's land, the Petitioner has raised a rough stone wall, measuring 4 feet height, 3 feet width with the length of 58 metres in east to west direction. Further, the Petitioner raised the live tree fencing. When the Petitioner was out of station, the Second Respondent/Commissioner, Ammapettai Panchayat Union has laid a gravel road in the cart track, after encroaching upon his land measuring about 2.40 metres in the western side, 1.60 metres in the eastern side for the full length of 58 meters east to west. They also demolished the said rough stone wall and also removed the live tree fencing. Due to the removal of live tree fencing and rough stone wall, cattle are entered in his field and causing damage to the crops, which have been raised in R.S.No.661/1, which belongs to the Petitioner. The Petitioner is a poor Agriculturist, and he runs his family only out of such Agricultural portion in the above said land.

5. Adding further, the Learned counsel would submit that in order to remove the said encroachment, the Petitioner submitted a representation, before the District Collector in the Jamabanthi, held in the District Collector Office on 17.12.2012. The said petition was numbered as BA/12/11796/17.12.12. After, numbering the said petition, the Respondent had not taken any

action and thereafter, also there was no response for the petition submitted by the Petitioner. Hence, the Petitioner sent reminders on 04.03.2013 and 25.06.2013, to the first Respondent. The first Respondent directed the Petitioner to contact the Block Development Officer. Consequently, the petitioner was requested the Tahsildar, Anthiyur, to depute the Taluk Surveyor for measuring his property. On complying with his request, the Taluk Surveyor, Anthiyur measured the land and found that there was an encroachment in the Petitioner's land and he has earmarked the same in the survey Plan. Thereafter, the Petitioner met the second Respondent and produced the said Plan with a request to remove the encroachment. Even after, sending the reminders to the various authorities including Chief Minister's Cell, the first Respondent has not come forward to take any action for the past three years. The Petitioner raised an objection before the First and Second Respondents with a prayer to remove the encroachment. Thereafter, it was identified by the Tahsildar, Anthiyur that there was an encroachment in a patta land belonging to the Petitioner. Further, he directed the Second Respondent/Commissioner of Ammapettai Panchayat Union to remove the encroachment measured by the Taluk Surveyor. Even after sending notice to the Second Respondent, he has not taken any action to remove the encroachment, now identified by the Tahsildar. Further, the Report and Plan given by the Taluk Surveyor will prove that the Respondents have encroached the land belonging to the Petitioner. Hence, the Petitioner has approached this Court, by way of the present Writ Petition for the relief, as stated above.

6. Mr.S.N.Parthasarathy, Learned Government Advocate appearing for the Respondents, relying on the counter filed by the 2nd respondent would submit that the villagers of the Posaiyanur and Chinamukanur Villages had given a representation, dated 29.08.2010, to the Collector for laying road from Posaiyanur and Chinamukanur. When at the time of taking the steps to form the road, the Petitioner herein viz., Deva Narayanan, and one Chinnaswamy and Ponnuswamy had not made any objection. Resultantly, on 25.09.2010, a Panchayat was held, wherein, all the villagers and the objectors were present. In the said Panchayat, the Petitioner and the other Objectors have agreed to form the road and did not raise any objection, for laying the public road. Based on the consent given by the Petitioner and others, the Patlur Panchayat have resolved to lay a road with an estimated cost of Rs.1,00,000/-. Accordingly, the work order was issued on 08.03.2012.

7. It is his further submission that only for the purpose of this Writ Petition, the petitioner has stated that the

disputed road was formed without getting his consent. Now, the work of laying of road was completed as early as on 13.08.2012 and after the lapse of four years, the Petitioner by raising an objection, has filed the present Writ Petition, which is not maintainable. Therefore, the Writ Petition filed by the Petitioner is devoid of merits and liable to be dismissed.

8. We have heard the submission of Mr.S.Krishnasamy Learned counsel appearing for the Petitioner and Mr.S.N.Parthasarathy, Learned Government Advocate appearing for the Respondents and perused the materials available on record.

9. Admittedly, the laying of road was completed on 13.08.2012. At the time of laying the road, either the Petitioner or no one had come and raised any objection. The consent given by the Petitioner was recorded by one Thiru.Chinnaswamy, who was the then president of the Panchayat Union concerned. Even though, it was stated on the side of the Petitioner that on 08.08.2012 itself, an objection letter was given to the second Respondent, in order to prove that the same was received by the second Respondent, no acknowledgment was produced by the Petitioner. The document enclosed in the typed set filed by the Petitioner would disclose that only on 04.06.2014, the Petitioner has raised an objection before the First and Second Respondents with a prayer to remove the encroachment. Now, on going through the Muchalika, dated 25.09.2010, executed by the Petitioner, and one Chinnaswamy and Ponnuswamy, clearly discloses that those persons gave consent for altering the cart track as a public road now in dispute. Further, they specifically admitted in respect to the said dispute that they consented to withdraw the case pending before the Civil Court, Bhavani. Further more, the said Muchalika was executed in the Panchayat specifically in the presence of many peoples. In order to deny the above said document, no relevant document has been produced on the side of the Petitioner.

10. As rightly pointed out by the Learned Government Advocate, on the basis of principle of Estoppel, the Petitioner is not entitled to raise any objection, that too, after giving consent in the year 2012, in respect of formation of gravel road. Further, in respect to the Muchalika executed by the Petitioner and the others, the learned counsel appearing for the Petitioner did not raise any objection. Even though, the First Respondent has not taken any steps to remove the encroachment, considering the fact that the work was completed by the Second Respondent for the public interest, particularly, after getting consent from the Petitioner, now, the petitioner is not entitled to, for the relief of Mandamus. The contention of the petitioner that due to formation of the said gravel road, the

entire agricultural work to be performed by the Petitioner would be spoiled, cannot be countenanced.

11. In the result, the Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The District Collector,
Erode District,
Erode.

2.The Commissioner,
Ammapettai Panchayat Union,
Ammapettai-638 311,
Erode District.

+1cc to Mr.S.Krishnasamy, Advocate sr.no.13543

W.P.No.6546 of 2016
and
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