IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 18.12.2018
PROUNOUNCED ON : 08.01.2019
CORAM
THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN
W.P.No.13373 of 2017
&
WMP.No.14401 of 2017

A.V.Radhakrishnan .. Petitioner

Vs.

1.The Regional Deputy Commissioner(Central),
Greater Chennai Corporation,
Second Cross Street(East),
Pulla Avenue,
Shenoy Nagar,
Chennai-600 030

2.The Assistant Commissioner,
Zone-X, Greater Chennai Corporation,
No.117, N.S.K. Salai,
Chennai-600 024

3.The Executive Engineer,
Ward-X,
Corporation of Chennai,
Chennai-600 024

4.The Zonal Officer,
Ward-X,
Corporation of Chennai,
Chennai-600 024

5.The Tahsildar,
Aminjikarai,
Chennai

6.G.Paul Pandian

(R6-impleaded as per order dated 08.01.2018
by MVJ & SVNJ in WMP No.18223 of 2017
in WP.No.13373 of 2017) ... Respondents

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Prayer:

Petition filed under section 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the second Respondent pertaining to his proceedings in Z.O.X/C.No./2504/2017 dated 08.05.2017 and quash the same.

For Petitioner : Mr.K.S.Karthik Raja

For Respondents: Mr.V.C.Selvasekaran, Standing Counsel for RR1 to4

: Mr.S.N.Parthasarathy, GA for R5
Mr.T.Mohan for Mr.M.Murali for R6

O R D E R

R.PONGIAPPAN,J.

The Petitioner has filed this Writ Petition seeking for the relief of interim injunction restraining the Respondents, their men, agents, assignees or any other persons acting on their behalf in any manner interfering with the Petitioner 's peaceful possession and enjoyment of the land measuring an extent of 23 ½ cents bearing No.106, comprised in Survey No.141/2 in T.S.No.17/33, Koyambedu Village, Chennai. Further, he prayed for issuance of a Writ of Certiorari, calling for the records of the second Respondent pertaining to his proceedings in Z.O.X/C.No./2504/2017 dated 08.05.2017 and quash the same as illegal and arbitrary.

2. Heard, Mr.K.S.Karthik Raja, Learned counsel for the Petitioner and Mr.V.C.Selvasekaran, Learned Standing counsel for the Respondents 1 to 4 and Mr.S.N.Parthasarathy, Learned Government Advocate for the Fifth Respondent and perused the materials placed on record.

3. It is alleged that the Petitioner is the absolute owner of the property namely Punja lands comprised in S.No.141/2 measuring an extent of 23½ cents bearing No.106, Koyambedu Village, Chennai. The said property has been purchased by the Petitioner under a registered Sale Deed dated 27.08.1981 vide document No.4743/81. The total extent of land purchased by the Petitioner under the above said Sale Deed, in the above Survey Number was 38 cents, out of which, he had sold 12 cents of land and some portion had been acquired by him. As of now, he is in possession of the remaining land measuring an extent of 23 ½ cents comprised in Survey No.141/2, Koyambedu Village, Chennai as an absolute owner. The entitlement of the said property is recognised by the revenue authorities and Patta has also been

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granted in favour of the Petitioner .

4. The said property abutes Poonamalli High Road on the South and it is very valuable property. Taking advantage of the property being a vacant land, some third parties wanted to grab the same and used the same as pathway. Hence, the Petitioner filed a suit in O.S.No.5561 of 2000 before the learned Judge, City Civil Court and obtained an order of permanent injunction.

5. On 13.09.2000, the Officials belonging to the Corporation of Chennai and the Revenue Department, visited the property. On an enquiry made by the Petitioner, he was informed that the enquiry was conducted by the Officials pertaining to the complaint given by the residents of that locality. With regard to the same on 24.09.2000, the Petitioner submitted a detailed representation to the Corporation Authorities alongwith the documents for showing that the Petitioner is the absolute owner of the said property and also the property in question is now in possession of the Petitioner. Subsequently, apprehending danger to his ownership, the Petitioner filed W.P.No.17159 of 2000, seeking the relief of a writ of mandamus to forbear the Respondents 1 to 3 herein or any person employed or authorised by them from in any manner interfering with his right of possession and the ownership of the petition mentioned property. Further, by filing WMP.No.24747 of 2000 dated 04.10.2000, the Petitioner obtained interim orders in favour of him. Subsequently, since the order of this Court was disobeyed by the authorities on 04.10.2000, he moved an contempt application in C.P. No.654 of 2000 against the Respondents. Consequently, this Court on 03.11.2000, directed the Revenue Divisional Officer, Chennai to inspect the land in question and submit his report as to the correct location and classification of the property.

6. In compliance of the order passed by this Court, after such inspection and verification of the records, the Revenue Divisional Officer filed a report before this Court on 17.11.2000, stating that the property is comprised in the present Survey No.T.S.No.17/33, Koyambedu Village, which previously correlated to the Old Survey No.141/2 of Koyambedu Village. He had also reported that the present classification of the land in T.S.No.17/33 of Koyambedu Village was classified as ''Natham Poramboke''.

7. In the said circumstances, by order dated 05.12.2000, this Court allowed the writ petition filed by the Petitioner holding that the property bearing Old S.No.141/2 is a private property belonging to the Petitioner. The Petitioner herein and the Respondents cannot request this Court to have a different view of the matter merely because of the land was re-classified as T.S.No.17/33 as ''Natham Poramboke''.

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8. Pursuant to the order passed by this Court, the Petitioner approached the Respondents 1 and 2/Corporation authorities, for re-classification. While so all of a sudden, the Special District Revenue Officer(L.A), Ministry of Road Transport and Highways, issued a notification dated 12.07.2010, stating that the various properties in and around the petitioner's property are being acquired for public purposes. In the said notification, it was mentioned that the property belonging to the Petitioner is a Government Poramboke Road. Immediately, on 04.08.2010, the Petitioner submitted a representation to the Special District Revenue Officer(L.A), National High Ways stating that S.No.17/part is a privately owned patta land belonging to him. Thereafter, the petitioner filed W.P.No.21665 of 2012 dated 20.08.2012, seeking for issuance of a writ of mandamus directing the Respondents therein to effect suitable corrections in the revenue records. In the said writ petition, this Court granted the order of Status-quo.

9. On 06.04.2015, the Corporation of Chennai issued a notice, in which the Petitioner was directed to remove the encroachment within three days. Hence, the Petitioner again constrained to approach this Court by way of filing W.P.No.10515 of 2015, challenging the said notice dated 06.04.2015,. At the same time, one Mr.P.Vinu, had also approached this Court, by filing W.P.No.24450 of 2015 dated 29.07.2015, praying for issuance of a writ of mandamus. In the said writ petition, the Petitioner herein was arrayed as Fifth Respondent.

10. On 09.01.2017, this Court passed a common order in the above said two writ petitions inter-alia directing the Tahsildar/ fifth Respondent herein to demarcate the boundaries of the land of the Petitioner and the private respondents. Finally, on 09.02.2017, this Court disposed of W.P.No.21665 of 2012, after incorporating and absorbing the order passed in W.P.Nos.10515 & 24450 of 2015.

11.The First Respondent/Regional Deputy Commissioner (Central) vide order dated 24.02.2017, directed the Petitioner to remove the encroachment within a period of seven days to which, the Petitioner preferred W.P. No.5472 of 2017 before this Court. In the said writ petition, on 03.03.2017, this Court directed the Respondent authorities to once again demarcate the property in question, of course after affording an opportunity of hearing the Petitioner to putforth his case alongwith all relevant documents.

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12. Pursuant to the same, the Petitioner on 04.04.2017, made a detailed representation to the Corporation authorities. Further, he filed a review application before this Court in R.P.No.82 of 2017 stating that the affidavit filed in support of W.P.No.5472 of 2017 having not been considered. Thereafter, without considering the representation dated 04.04.2017, the second Respondent passed the impugned order with the very same findings rendered by the Respondents earlier. Feeling aggrieved the same, the Petitioner is before this Court by way of filing the present writ petition.

13. During the pendency of this writ petition, the sixth Respondent namely G.Paul Pandian, was impleaded as a sixth Respondent in this writ petition vide order dated 08.01.2018 in WMP No.18223 of 2017.

14. Resisting the claim made by the Petitioner, the Third Respondent by filing counter affidavit for himself and on behalf of the First, Second and the Fourth Respondents, stating that the writ Petitioner herein has not filed any suit for declaration of title over the suit property. Being there is no specific direction to the Corporation in O.S.No.5561 of 2000, the decree passed in the said suit will not bind the Corporation of Chennai in any manner. Further, when at the time of passing the order in C.A.No.654 of 2000, this Court ordered as follows:

> ''.....even though the impugned land in reported, to be a patta land, by the Respondents it is suffice to observe that the Respondents are at liberty to initiate appropriate action to acquire take possession and form the public road as per law if it is so required thereby holding that there was no contempt of Court's order by the Respondents....''.

Further, this Court on 05.12.2000, when at the time of disposing of W.P. No.24747 of 2000 observed as follows:

> ''....So in view of the said order, there will be an order forbearing the Respondents 1 to 3 from interfering with the Petitioner 's right in respect of S.No.141/2. With respect to the other Survey No.141/3B, Petitioner has to establish his title only before the Civil Court. With the above observation the writ petition is disposed of...''

15. Moreover, during the pendency of W.P.No.21665 of 2012, the very same Petitioner filed another writ petition in

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W.P.No.10515 of 2015 praying for issuance of a writ of certiorari to call for the records and to quash the proceedings in pursuance of notice issued in Z.O.X./U29/C.No./383/2015 dated 06.04.2015. In the mean time, when at the time of disposing of the above said writ petition alongwith W.P.No.24450 of 2015, which was filed by one P.Vinu, this Court on 09.01.2017 has passed a common order in both the cases, the relevant portion is extracted hereunder:

> ''....2.We are of the view that these petitions are liable to be disposed of in terms of the following directions:-
>
> (a)Fresh demarcation exercise be carried out by the Tahsildar, Aminjikarai Taluk to demarcate the boundaries of the land of the Petitioner , private Respondents and what is claimed to be an encroachment by the Petitioner in W.P.No.10515 of 2015.
>
> (b)The status quo order in W.P.No.21665 of 2012 would not come in the way of carrying out such demarcation.
>
> (c)The demarcation should be carried out on 30th January, 2017 at 11.00A.M. and both the private parties have notice of the same, as they are represented in Court and no further notice would be required.
>
> (d)Dependant on the fate of the demarcation exercise, if any encroachment by any party is found, action in accordance with law shall be taken and concluded within a maximum period of three months thereafter.
>
> (e)The aforesaid would of course be subject to the fate of W.P.No.21665 of 2012 in which status-quo order has been passed.
>
> 2.The writ petitions, accordingly, stand disposed of.....''

16. Further more, this Court on 09.02.2017 while disposing of W.P.No.21665 of 2012, passed the following order:

> ''....5.The land in question is stated to be the same. Thus, the demarcation exercise to be carried out would sub-serve the purpose in so far as even the present petition is concerned.
>
> 6.We may note that as per the counter affidavit of the third Respondent, the project for expansion of road, at present, has been given up.
>
> Writ petition, accordingly, stands disposed of....''

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17. Subsequently, as per the orders of this Court, the Fifth Respondent/Tahsildar, Aminjikarai had demarcated the land in question on 30.1.2017 and furnished his report on 13.02.2017 vide NA.Ka.No.A1/427/2017 alongwith sketch which clearly denotes that Block No.33 in T.S.No.17 is encroached by the Petitioner herein.

18. Pursuant to the above Report of the Tahsildar, Aminjikarai, the First Respondent herein passed an order on 24.02.2017, directing the Petitioner to remove encroachment within seven days from the date of receipt of the final order. Aggrieved by the same, the Petitioner filed another W.P.No.5472 of 2017, seeking for issuance of a writ of certiorari calling for the records of the first Respondent pertaining to his proceedings in No.Z.O.X/C.No.A8/855/2017 dated 24.02.2017. In the said writ petition, this Court had passed the following order:

> ''.....5. On hearing the Learned counsel for the parties, we direct the Respondent authorities to once again demarcate the property in question, of course after affording an opportunity to the Petitioner to putforth his case alongwith all relevant documents. The Petitioner is granted fifteen days time from the date of receipt of a copy of this order to put forth his case as aforesaid. The Respondent authorities shall thereafter demarcate the property in question and pass appropriate orders in accordance with law within fifteen days therefrom. Till such decision is taken by the Respondent authorities, there shall be an order of status quo. In case the Respondent authorities find any encroachment, they can proceed to remove the encroachments in accordance with law and take steps to acquire the land...''

19. Thereafter, on 24.04.2017 after conducting a personal hearing of the Petitioner alongwith the Fifth Respondent/Tahsildar, the Corporation authorities jointly inspected the land in question and found that the Petitioner has encroached the road portion. Pursuant to the same, the second Respondent passed the impugned order dated 08.05.2017. Challenging the same, the Petitioner has approached this Court by way of filing the present writ petition.

20. The Fifth Respondent by filing counter had stated that only based on a direction given by this Court, after affording an opportunity to the Petitioner to put forth his case alongwith the relevant documents, demarcated the property and thereupon the Second Respondent /Assistant Commissioner, Zone- X, Corporation of Chennai has passed the final order.

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21. The newly impleaded Sixth Respondent had stated in his counter that he purchased the property in Block No.33, S.No.140/5 in T.S.No.9 having access to his land from Poonamallee High Road and that of the Chennai Corporation pathway measuring an extent of 9.4 meters. Length of 250 meters, provided for the ingress and egress through the said road leading to Koyambedu New Colony. Subsequently, the same was supported through a notification dated 12.07.2010 issued by the Ministry of Road Transport and Highways, New Delhi in Tamil Daily News Paper ''Dinakaran'', wherein, it was categorically mentioned that the above Block No.33, Town Survey No.17 was described as ''Road. He also stated that after giving various representations to the Officials of the Greater Chennai Corporation, he was constrained to file W.P.No.1268 of 2015, seeking for a mandamus to remove the encroachment made by the First Respondent. In the meanwhile, this Court directed the Fifth Respondent/Tahsildar to demarcate the boundaries of the land in question once again. There upon after completing the above said process, the Petitioner has filed the present writ petition. According to the Sixth Respondent, the petitioner obstructed the entire Corporation Public Road and thereby preventing an access to the public on the Road.

22. The Learned counsel for the Petitioner would submit that the Petitioner is the absolute owner of the petition mentioned property. The Patta issued by the revenue authorities in Patta No.1279 is in the name of the Petitioner. In a suit filed by the Petitioner, the Learned XV Assistant City Civil Judge granted an order of injunction restraining others from interfering in the said property. Even after passing several orders by this Court, the fifth Respondent / Tahsildar has not properly demarcated the land in question but based on the report given by the fifth Respondent, the second Respondent passed the impugned order dated 08.05.2017, which is not in accordance with law.

23. Per contra, the Learned Standing Counsel appearing for the Respondents 1 to 4 and the Learned Government Advocate appearing for the Fifth Respondent contended that based upon the direction given by this Court in W.P.No.5472 of 2017, the authorities after giving sufficient opportunity to the Petitioner demarcated the land in question and there upon the impugned order was passed by the second Respondent. According to the Learned Senior counsel, there is no merits in the writ petition filed by the Petitioner. From the date of purchasing the property by the sixth Respondent, the land now in question was used as ''Corporation Road''. Now only after filing several writ petitions, the Petitioner encroached the petition mentioned property and attempted to put up a construction. The relevant

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documents obtained by the Respondents will prove that the property now claimed by the Petitioner is classified as ''natham''. Particularly, used as a ''Corporation Road''. The same was confirmed from the notification issued by the Central Government Highways Department.

24. Now, on considering the submissions made by the Learned counsel on either side, it would be appropriate to extract the number of cases filed by the Petitioner and the orders passed by the respective Courts. The details of the cases filed by the petitioner and the orders passed by the respective Courts are given below:

Case No.	Prayer	Order of the Hon'ble Court concerned
O.S.No.5561/2000	Prayed for permanent injunction	Permanent injunction granted
W.P.No.17159/2000	Prayer for forbearing the Respondents therein in or any person in any manner interfering with the right of possession and the ownership of the property.	I am inclined to pass orders only in respect of Survey No.141/2, Koyambedu Village. Learned Judge after seeing the records found that the said land bearing Survey No.141/2 is a patta land and it belongs to the Petitioner . When such finding is given by the Learned Judge, the Respondent cannot request the Court to take a different view of the matter. So in view of the said order, there will be an order forbearing the Respondents 1 to 3 from interfering with the Petitioner 's right in respect of S.No.141/2.
WMP.No.24747/2000 in W.P.No.17159/2000	Sought for interim orders pending the main writ petition	Obtained interim orders pending the main writ petition
C.A.No.654/2000		Directed the Revenue Divisional Officer, Chennai to inspect the land and submit his report as to the correct location and classification of the property.

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Case No.	Prayer	Order of the Hon'ble Court concerned
W.P.No.21665 of 2012	With a prayer for direction to the Respondents to correct the Revenue Records	Hon'ble Court ordered Status-quo. The W.P. Was subsequently ordered to dispose the writ petition after incorporating and observing the order passed in W.P.Nos.10515/2015 and 24450/2015
W.P.No.1268/2015 filed by G.Paul Pandian and two others	Prayed for a direction to the Respondents 1 to 4 to remove the illegal construction activities of encroachment made by the 5th Respondent	In view of the above submission, the first Respondent is directed to make inspection and survey with regard to the alleged encroachment, after issuing notice to the persons concerned and if is found that there is encroachment, necessary steps for removal of the same shall be taken, in accordance with law, within a period of four weeks from the ate fo receipt of a copy of the order
W.P.No.10515/2015	Challenged the eviction notice	Hon'ble High Court in its common order in W.P.Nos.10515/2015 and 24450/2015 had ordered the 4th Respondent therein to demarcate the boundaries of the lands of the Petitioner and to proceed in accordance with law
W.P.No.24450/2015 filed by one Thiru Venu		Hon'ble High Court in its common order in W.P.Nos.10515/2015 and 24450/2015 had ordered the 4th Respondent therein to demarcate the boundaries of the lands of the Petitioner and to proceed in accordance with law
W.P.No.5472 of 2017		In the order dated 03.03.2017 in W.P.No.5472 of 2017 the authorities were once again ordered to demarcate the property in question after affording an opportunity to the Petitioner to put forth his case alongwith all relevant documents

25. It is an admitted fact that in a judgement rendered by

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the Learned Judge, City Civil Court, Chennai in O.S.No.5561 of 2000, an order of injunction granted in favour of the Petitioner. Now on going through the other particulars available in the above said suit, the Petitioner prayed the relief of injunction alone. He had not prayed any relief against the Respondents in the aforesaid suit. Further, in the above said suit, the relief of declaration was not sought for by the Petitioner. Since the Respondents in this writ petition are not the parties to the above said proceedings, the order passed by the Learned Judge, City Civil Court, Chennai cannot bind the present Respondents. More over, in the very same suit, the Petitioner was not declared as an absolute owner of the land in question. Secondly, in the order passed by this Court in W.P.No.1268 of 2015 dated 12.02.2015, it was observed in Paragraph no.2 as New S.No.17 is a Government Poramboke land in Block No.33.

26. More over, in the impugned order passed by the second Respondent dated 08.05.2017, he referred various writ petitions filed by the Petitioner and also the orders passed in the respective writ petitions. Particularly, he mentioned that before passing the final order on 25.04.2017 a joint inspection was held alongwith the Revenue authorities, after intimating the same to the Petitioner. Then only, they demarcated the encroached portion.

27. In the said circumstances, the Petitioner cannot claim that the encroached portion is not measured properly. Further on going through the Sale Deed dated 31.03.1982, which was a document included by the First Respondent in favour of one R.Panneerselvam that S.No.141/1(land in dispute) is a ''Common road''. So the particulars of his own document are also against him. Further, a Report submitted by the Revenue Divisional Officer in C.A.No.654 of 2000, he had specifically mentioned that T.S.No.17, Block No.33 of Koyambedu Village is classified as a ''Government Poramboke'' and it stands registered in the name of Corporation of Chennai. Further, in the notification dated 12.07.2010 issued by the Highways Department, New Delhi, it was mentioned that the property now claimed by the Petitioner was already classified as ''Road''.

28. Thereafter, on culling out the details available in the above said documents will clearly prove that the Petitioner is not having any title over S.No.141/1, Koyambedu Village. Apart from that only after affording an opportunity to the Petitioner, the orders were passed by this Court in the various writ petitions. The property now in question was demarcated and the encroached property alone is identified by the Revenue authorities. In the said circumstances, without any relevant document, the Petitioner prayed for the relief of injunction

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and for quashing the impugned order. The said reliefs are not substantiated with necessary materials.

29. In view of the above, the writ petition is deviod of merits and accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

To

1.The Regional Deputy Commissioner(Central),
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5.The Tahsildar,
Aminjikarai,
Chennai

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+1cc to Government Pleader sr.2726
+1cc to Mr.K.S.Karthik Raja, Advocate srno.2396
+1cc to Mr.M.Murali, Advocate sr.no.1985

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