



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**W.P. (MD) No.3825 of 2019**

WEB COPY

Panchavarnam

... Petitioner

Vs

1. The District Collector,
Virudhunagar District,
Virudhunagar.
2. The Superintendent of Police,
Virudhunagar District,
Virudhunagar.
3. The Revenue Divisional Officer,
Aruppukkottai,
Virudhunagar District.
4. The Tahsildar,
Karipatti Taluk,
Virudhunagar District.
5. The Executive Officer,
Kariapatti Town Panchayat,
Virudhunagar District.
6. The Inspector of Police,
Kariapatti Police Station,
Virudhunagar District.
7. Paramasivam

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, to direct the respondents 4 and 5 to forthwith remove the fence and name board, put up in the S.No.44/9 which situate in between the house of the petitioner bearing D.No.4-3-15/2-1 and South-North Public Street, namely Muthalamman Kovil Street, Achampatti Village, Kariapatti Town Panchayat, Virudhunagar District in the light of Civil Court decree in O.S.No.52 of 2016 dated 12.12.2016 on the file of the District Munsif Court, Aruppukkottai.

For Petitioner
For R1 to R6

: Mr.S.Balamurugan
: Mr.M.Karuppasamy
Government Advocate
: Mr.T.S.Mohammed Mohideen

For R7

**ORDER**

Heard the learned counsel on either side.

2. The writ petitioner is the owner of the house bearing D.No.4-3-15/2-1, Muthalamman Kovil Street, Achampatti Village, Kariapatti Town Panchayat, Virudhunagar District.

3. The petitioner's grievance is that a fence has been unlawfully erected in front of her house and that this has completely impeded her right of access. According to the writ petitioner, it was the fifth respondent, who put up the offending fence. She has therefore given a representation dated 13.02.2019 calling upon the authorities to remove the same.

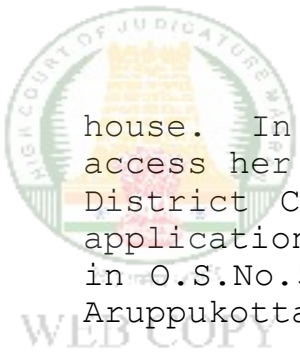
4. The learned counsel appearing for the writ petitioner pointed out that the writ petitioner had already filed O.S.No.52 of 2016 before the learned Principal District Munsif, Aruppukottai seeking the relief of the permanent injunction in respect of the property in question. The suit was decreed on 12.12.2016. All that the petitioner seeks its enforcement of her rights in terms of the said Civil Court decree.

5. When the matter was taken up for hearing, the learned counsel appearing for the seventh respondent pointed out that there is a dispute between the local villagers on the one hand and the petitioner on the other. According to the learned counsel, the petitioner wanted to grab the poramboke land lying front of her house and that the local villagers have put up the fence in question and that it is unfair to blame the seventh respondent or the fifth respondent. He also pointed out that the decree granted in favour of the writ petitioner is an *ex-parte* one.

6. The learned Government Advocate as well as the learned counsel appearing for the seventh respondent produced the relevant revenue records. It is seen there from that S.No.44/9 totally comprised 180 sqr mtrs. The writ petitioner, namely Panchavarnam was given patta in respect of the S.Nos.44/26, 44/27 totally measuring 77 sqr mtrs. She is laying claim on the balance extent also. The revenue records categorically indicate that beyond of S.No.44/26 and 44/27, the remaining extent of land in S.No.44/9 is a poramboke land.

7. The learned counsel appearing for the writ petitioner gives an undertaking before this Court that the petitioner will confine her rights to what is set out in the patta that is enclosed at page N.14 of the typed set of papers. In other words, she will not raise any structure on the front side of her house. This undertaking is recorded.

8. Recording the said undertaking, this Court permits the petitioner to remove the fence that has been erected in front of her



house. In other words, the fence that now impedes the petitioner to access her right alone shall be pulled down. This Court directs the District Collector, Virudhunagar District immediately take out an application for setting aside the ex-parte judgment and decree made in O.S.No.52 of 2016 on the file of the Principal District Munsif, Aruppukottai.

9. This Court went through the contents of the decree. In the decree portion the writ petitioner's claim is on the entire S.No.44/9 measuring 180 sqr mtrs. It is seen from the revenue records that the writ petitioner has right only over 77 sqr mtrs and her claim of the entire 180 sqr mtrs is unfounded. The documents annexed to the judgment indicate that what was produced was only an Inam settlement executed on 13.05.2010 and the planning approval was given by Executive Officer. No other material is there to sustain the writ petitioner's claim.

10. Be that as it may, the learned trial Munsif was constrained to pass an ex-parte judgement and decree because there was no appearance on the side of the Government or the Executive Officer in the said civil suit. Therefore, even while directing the first respondent to take steps for having the said ex-parte judgment and decree set aside, this Court further directs the first respondent to conduct an enquiry as to why the said suit proceedings came to be disposed of on an ex-parte basis. The first respondent shall file action report within a period of three months from the date of receipt of a copy of this order. The erring Officials and Officers responsible for leaving the suit ex-parte shall be dealt with.

11. The Writ Petition is allowed based on the undertaking given by the petitioner through her counsel. No costs.

sd/
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
Virudhunagar District,
Virudhunagar.
2. The Superintendent of Police,
Virudhunagar District,
Virudhunagar.
3. The Revenue Divisional Officer,
<https://hcservices.ecourts.gov.in/hcservices/>
Aruppukottai,
Virudhunagar District.



4. The Tahsildar,
Karipatti Taluk,
Virudhunagar District.

5. The Executive Officer,
Kariapatti Town Panchayat,
Virudhunagar District.

6. The Inspector of Police,
Kariapatti Police Station,
Virudhunagar District.

+1 CC to Mr.S.BALAMURUGAN, Advocate (SR-60461[F] dated 11/04/2019)
+1 CC to Mr.T.S.MOHAMED MOHIDHEEN, Advocate (SR-60606[F] dated
11/04/2019)
+1 CC to SPL GP (SR-60765[F] dated 12/04/2019)

W.P. (MD) No. 3825 of 2019
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