



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.04.2019

CORAM:

THE HON'BLE Mr. JUSTICE K.KALYANASUNDARAM

AND

THE HON'BLE Mrs. JUSTICE S.RAMATHILAGAM

W.P. (MD) No.9156 of 2018

and

W.M.P. (MD) Nos.8513 and 8514 of 2018

Veeralagammal

... Petitioner

Vs.

- 1.The District Collector,
O/o District Collector Office,
Virudhunagar District.
- 2.The Special Deputy Collector cum
Sivakasi Assistant Collector,
Sivakasi,
Virudhunagar District.
- 3.The Revenue Divisional Officer,
O/o. Revenue Divisional Officer,
Sivakasi,
Virudhunagar District.
- 4.The Special Deputy Tahsildar,
O/o. Special Deputy Tahsildar
Virudhunagar.
- 5.The Tahsildar,
O/o. Tahsildar Office,
Srivilliputhur,
Virudhunagar District.
- 6.P.K.Karuppan
- 7.Alagarsamy

... Respondents

PRAYER: The petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the impugned order passed by the 3rd respondent vide proceedings in Na.Ka.A1/2628/2016 dated 22.02.2018 and the consequent impugned order passed by the 5th respondent vide proceedings in Na.Ka.A1/7051/2016 dated 20.04.2018 and quash the same as illegal.



For Petitioner : Mr.R.Karunanidhi
For Respondent : Mr.V.R.Shanmuganathan, Spl.G.P for R1 to 5
: Mr.M.Mahaboob Athiff for R6 and R7

ORDER

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(Order of the Court was made by K.KALYANASUNDARAM,J.)

This Writ petition has been filed to quash the order of the third respondent vide proceedings in Na.Ka.A1/2628/2016 dated 22.02.2018 and the consequential impugned order in Na.Ka.A1/7051/2016 dated 20.04.2018 passed by the 5th respondent as illegal.

2.The case of the petitioner is that she is the absolute owner of the property measuring to an extent of 1 acre 69 cents in Survey No.1210 and 1211/3A. She was also issued patta No.1772 and as such she is in possession and enjoyment of the same. The petitioner would further state that the fifth respondent, without any notice to her, passed an order on 29.08.2016 by directing her to remove the fence, as if there is a pathway in her property. For which, she gave a detailed reply and challenged the order of the second respondent dated 27.08.2016 in W.P.(MD)No.17848 of 2016. Pursuant to the order, an iron gate put up by the petitioner was removed and hence, W.P.(MD)No.17849 of 2016 was filed, directing the respondents to restore possession of her property. This Court by a common order disposed of the Writ petitions remanding the matter to the respondent concerned to verify the anterior records if any. Pursuant to the said order, the third respondent has passed the order dated 22.02.2018, which is impugned in this Writ petition.

3.Mr.R.Karunanidhi, learned counsel for the petitioner would state that the third respondent does not have any jurisdiction to decide the title, when there is a rival claim between the private parties: that the disputed land is a patta land of the petitioner and hence, there is no question of removal of encroachment; that the respondents failed to note that in the revenue records, the disputed land is not shown as a common pathway and the impugned order passed is in violation of principles of natural justice.

4.Per contra, the learned counsel for the respondents 6 and 7 would state that the land in Survey No.1211/3A has been referred as "poosthi pathai" in the settlement register and Adangal for the Fasli year 1427 also shows that the land in Survey Nos.1211/3A and 3B have referred as "poosthi pathai". The learned counsel further contended that though the land is the patta land of the petitioner, the pathway is running in Survey No.1206/1, 1204/1, 1203/1, 1206/3, 1205, 1203, 1202/2, 1198/1, 1199/2, 1200/1, 1198/1, 1197/2, 1201, 1202, 1207, 1185, 1186, 1187, 1183, 1182, 1184, 1181, 1180, 1179, 1170, 1178 and 1176, which have been utilized by the public for more than 8 years. The learned counsel by citing a decision of this Court reported in **2018(1) CWC 529 (J.Jagadesh Vs. Tahsildar,**



Modakurichi Taluk and others) and unreported judgment passed in **W.P. (MD) No. 5281 of 2014 dated 18.12.2018** would argue that the land has to be treated as a Government land.

5. In **2018(1) CWC 529**, the Division Bench by referring to the Revenue Standing Order 26(15) has held that a plan marked pathway running in patta land is Government land and if any encroachment of the said land, the same has to be removed. Paragraph 13 is extracted below:

"13. A plain reading of the aforesaid provision shows that a Plan-marked pathway running in a patta land is a Government land and if any encroacher has interfered with the Plan marked detail so as to close its entrance to and exist from his lands, an eviction can be ordered. So, in view of the aforesaid Revenue Standing Order even though the subject matter of the Cart track is running in a Patta land, it should be treated as a Government land. Admittedly, the petitioner has blocked the said Cart track by putting Iron Gate and Compound wall and therefore, the First respondent has rightly passed the order to remove the said encroachment."

6. The same view was taken by another Division Bench in the unreported judgment referred supra.

7. The relevant Revenue Standing Order 26(15) is extracted below:

"15. Encroachments on Plan-marked details - A Plan marked channel or pathway running in a patta land is a Government land. Eviction of encroachment in such lands need be invoked only in cases where the encroacher has interfered with the Plan-marked detail so as to close its entrance to and exit from his lands. In the case of pathways and Cart-tracks which have been used by the Public till recently, the ryot should not be allowed to shift the course of the details to suit his own convenience. However, such diversions of Plan-marked channel from its original course, with a view to consolidate his holding or to facilitate irrigation of the portions which would be otherwise severed need not be treated as encroachment."

8. In the case on hand, the order impugned in this Writ petition has been assailed mainly on the ground that the land belongs to the petitioner. A perusal of the order impugned in this Writ petition would show that the Revenue Divisional Officer after obtaining a statement from the concerned VAO and conducting an inspection on 25.01.2018 has come to the conclusion that the disputed pathway is in existence for more than 80 years and it is used by 27 pattadars and the village tribes. It is also pertinent to note that in the earlier round, the Division Bench in **W.P. Nos. 17848 and 17849 of 2016** has accepted the case of the



respondents and the matter was remanded back only for limited purpose for verifying the anterior records if any for existence of the temporary pathway.

9. Keeping in view the principles laid down in the decisions referred supra and taking note of the facts of this case, we find no merit in the Writ petition. In that view, the Writ petition stands dismissed. No costs. Consequently, connected W.M.Ps. are closed.

Sd/-

Assistant Registrar (Writs)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The District Collector,
O/o District Collector Office,
Virudhunagar District.
2. The Special Deputy Collector cum
Sivakasi Assistant Collector,
Sivakasi, Virudhunagar District.
3. The Revenue Divisional Officer,
O/o. Revenue Divisional Officer,
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4. The Special Deputy Tahsildar,
O/o. Special Deputy Tahsildar
Virudhunagar.
5. The Tahsildar,
O/o. Tahsildar Office,
Srivilliputhur, Virudhunagar District.

+1 CC to Mr. R. KARUNANIDHI, Advocate SR-58804.

+1 CC to SPL GP SR-59271.

W.P. (MD) No. 9156 of 2018
03.04.2019

CS: (12/06/2019) 6P 9C