

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2020

CORAM

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

W.P. Nos. 10204 and 10205 of 2018
and

W.P. No. 30292 of 2019
and

W.M.P. No. 30271 and 33622 of 2019
in

W.P. No. 30292 of 2019

W.P. No. 10204 of 2018

S. Velusamy

....Petitioner

-vs-

1. The District Collector,
Erode,
Erode District.

2. The Tahsildar,
Kodumudi Taluk,
Erode District.

3. The Executive Officer,
Kodumudi Town Panchayat,
Kodumudi,
Erode District.

4. Gnanasundaram

5. The Director,
Vigilance and Anti Corruption,
No. 293, MKN Road,
Collectors Nagar,
Alandur,
Chennai - 600 016.

6. The Director of Town Panchayats,
Kuralagam,
Broadway,
Chennai.

7. G.S. Krishnamoorthy ... Respondents
(R4 to R6 and R7 impleaded vide orders dated 26.07.2019
in W.M.P. Nos. 7625 and 12498 of 2019)

Prayer:- Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Mandamus,
directing the Respondents to restore the cart track by closing
trench on the cart track in R.S. No. 14/2, Kodumudi Village and
Taluk, Erode District by considering the representation dated
16.03.2018.

For Petitioner : Mr. C. Prakasam

For Respondents : Mr. G.K. Muthukumar,
Special Government Pleader
(for R1, R2, R5 and R6)
Mr. M. Manikandan (for R3 and R4)
Mr. T. Sathyaseelan (for R7)

W.P. No. 10205 of 2018

V. Sivakumar ... Petitioner

-vs-

1. The District Collector,
Erode,
Erode District.
2. The Tahsildar,
Kodumudi Taluk,
Erode District.
3. The Executive Officer,
Kodumudi Town Panchayat,
Kodumudi,
Erode District.
4. Gnanasundaram
5. The Director,
Vigilance and Anti Corruption,
No. 293, MKN Road,
Collectors Nagar,
Alandur,
Chennai - 600 016.
6. The Director of Town Panchayats,
Kuralagam,
Broadway, Chennai.

7. G.S. Krishnamoorthy ... Respondents
(R4 to R6 and R7 impleaded vide orders dated 26.07.2019
in W.M.P. Nos. 7626 and 12784 of 2019)

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the Respondents to restore the cart track by closing trench on the cart track in R.S. No. 14/2, Kodumudi Village and Taluk, Erode District by considering the representation dated 16.03.2018.

For Petitioner : Mr. C. Prakasam

For Respondents: Mr. G.K. Muthukumar,
Special Government Pleader
(for R1, R2, R5 and R6)

Mr. M. Manikandan (for R3 and R4)
Mr. T. Sathyaseelan (for R7)

W.P. No. 30292 of 2019

V. Sivakumar ... Petitioner

-vs-

1. The District Collector,
Erode,
Erode District.
2. The Tahsildar,
Kodumudi Taluk,
Erode District.
3. The Executive Officer,
Kodumudi Town Panchayat,
Kodumudi,
Erode District.
4. The Organizer,
Olrirum Erode Foundation,
S.K.M. Building,
Opp. Railway Station,
Erode.

5. G.S. Krishnamoorthy ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, forbearing the Respondents from digging pond in the land situated in S. No. 14/2, Kodumudi Village, Erode District and left out the pathway to reach the Petitioner to his land situated in R.S. Nos. 11/2, 3, 4, 5 Old S. No. 221, Kodumudi Village and Taluk, Erode District.

For Petitioner : Mr. C. Prakasam

For Respondents: Mr. G.K. Muthukumar,
Special Government Pleader
(for R1 and R2)
Mr. M. Manikandan (for R3)
Mr. P.S. Jayakumar (for R4)
Mr. T. Sathyaseelan (for R5)

C O M M O N O R D E R

Heard Mr. C. Prakasam, Learned Counsel for the Petitioners in all Writ Petitions, Mr. G.K. Muthukumar, Learned Special Government Pleader for the First and Second Respondents in all Writ Petitions and Fifth and Sixth Respondents in W.P. Nos. 10204 and 10205 of 2018, Mr. M. Manikandan, Learned Counsel for the Third and Fourth Respondents in W.P. Nos. 10204 and 10205 of 2018 and Third Respondent in W.P. No. 30292 of 2019, Mr. P.S. Jayakumar, Learned Counsel for the Fourth Respondent in W.P. No. 30292 of 2019 and Mr. T. Sathyaseelan, Learned Counsel for the Seventh Respondents in W.P. Nos. 10204 and 10205 of 2018 and Fifth Respondent in W.P. No. 30292 of 2019 and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioners are aggrieved by the action of the official Respondents in digging a trench on the cart track in S. No. 14/2, Kodumudi Village, Erode District claiming it as a pond. It is now settled legal position as held by the Division Bench of this Court in Kuppuswamy Nainar -vs- District Revenue Officer [(1995) 1 MLJ 426], which has been reiterated by another Division Bench in Vishwas Footwear Company Ltd., -vs- District Collector, Kancheepuram [2011 (5) CTC 94] that where there is a dispute relating to the title of the property, the Revenue Authorities cannot adjudicate upon the same and would have to necessarily relegate the parties to the jurisdictional Civil Court for determination in that regard and depending upon its ultimate outcome, it would be open to the successful party to thereafter to apply before the concerned Revenue Authorities for mutation of records relating to the property in his favour.

3. The Hon'ble Supreme Court of India in Roshna T -vs- Abdul Azeez K.T. [(2019) 2 SCC 329] has reiterated the law that disputed questions of fact relating to property rights, which are private in character and do not have any element of public law involved, require full fledged trial by recording of evidence of parties and cannot be decided in a summary manner in proceedings under Article 226 of the Constitution of India.

4. Having due regard to this unassailable legal position, the claims made by the Petitioners in these Writ Petitions would have to be adjudicated only before the jurisdictional Civil Court, and Learned Counsel for the Petitioners seeks permission of this Court to withdraw these Writ Petitions with liberty to resort to the same. He has also made an endorsement to that effect, which is recorded.

5. At the same time, the Learned Counsel for the Petitioners referring to the Affidavit dated 17.02.2020 filed by the Second Respondent in W.P. No.30292 of 2019 makes a fervent plea that status quo as existing today described in para 8 therein may be maintained till 31.03.2020 so as to enable the Petitioners to file the suit before the jurisdictional Civil Court and work out their rights to obtain interim orders in those proceedings by then. Such request confined to that limited period is acceded.

6. In view of the dictum laid down by the Hon'ble Supreme Court in Muddasani Venkata -vs- Muddasani Venkata Sarojana [(2016) 12 SCC 288] that entries of possession in revenue records do not give any right to claim title to the property, the Civil Court shall not be influenced or inhibited by the past revenue entries made in the revenue records in favour of either of the parties, and the question of the ownership of the property would have to be independently decided on merits considering the pleadings and the evidence adduced by the contesting parties in accordance with law. That apart, in view of the doctrine of lis pendens embodied in Section 52 of the Transfer of Property Act, 1882, none of the parties to that suit shall alienate or create any form of encumbrances or third party interests, without the prior permission of the Civil Court during its pendency. Though obvious, it is clarified that no view has been expressed by this Court on the correctness or entitlement on the merits of the rival claim (for title and possession) relating to the property made by the contesting parties.

7. Accordingly, these Writ Petitions are dismissed as withdrawn granting such liberty. Consequently, the connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar (CS-II)

//True copy//

Sub Assistant Registrar

vjt/dm/sj

To

1. The District Collector,
Erode, Erode District.
2. The Tahsildar,
Kodumudi Taluk,
Erode District.
3. The Executive Officer,
Kodumudi Town Panchayat,
Kodumudi,
Erode District.
4. The Director,
Vigilance and Anti Corruption,
No. 293, MKN Road,
Collectors Nagar,
Alandur,
Chennai - 600 016.
5. The Director of Town Panchayats,
Kuralagam, Broadway, Chennai.

+3cc to Mr.T. Sathyaseelan, Advocate SR.No.15992, 15993, 15994

+1cc to Mr.P.S. Jayakumar, Advocate SR.No.15885

+1cc to Mr.S.Natarajan, Advocate SR.No.15913

+2cc to Government Pleader SR.No.16220, 16728

W.P. Nos. 10204 and 10205 of 2018
and

W.P. No. 30292 of 2019

KJ(CO)
GMY(10/06/2020)