

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :24.02.2020

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.23017 of 2016  
and  
WMP.No. 19750 of 2016

1. V.R. Bhoopathy
2. B. Sundaramurthy

...Petitioners

-vs-

1. The Additional Secretary and  
Commissioner of Land Administration,  
Chepauk, Chennai - 600 005.
2. The District Revenue Officer,  
Chennai -600 001.
3. The District Collector,  
Chennai District, Chennai.
4. The Assistant Director,  
(Survey & Land Records)  
Chennai District, Chennai.
5. The Tahsildar,  
Mambalam Guindy Taluk,  
Chennai - 600 078.
6. The Commissioner,  
Greater Corporation of Chennai,  
Ripon Building, Chennai - 600 003.
7. Ponnammal Nagar Association,  
No.388, Ponnammal Nagar,  
Nesapakkam, Chennai - 600 078.  
Rep. by its President.

...Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified mandamus, calling for the records comprised in the proceedings of the 1<sup>st</sup> respondent dated 23.06.2016 in Letter No.K4/6120/2016 and quash the same as illegal and consequently

direct the 1<sup>st</sup> respondent or any other competent authority as may be nominated by him to consider the claims of the petitioners for rectification of erroneous reclassification of the lands measuring 18 cents in Old Survey No.387/1 and 387/2 and T.S.No.49/1 in Kodambakkam Village, Mambalam-Guindy Taluk in question from public road to private patta lands of the petitioners on merits and in accordance with law and grant patta for the same.

For Petitioners : Mr.C.V. Subramanian

For Respondents : Mrs.A.Sri Jayanthi  
Additional Govt. Pleader [R1 to R5]  
Ms. Manimegalai  
Standing Counsel [R6]  
Mr.G.V. Sridharan [R7]

#### O R D E R

Heard Mr.C.V.Subramanian, learned counsel for the petitioners, Mrs.A.Sri Jayanthi, learned Special Government Pleader for respondents 1 to 5, Ms.Manimegalai, learned Standing Counsel for the 6<sup>th</sup> respondent and Mr.G.V.Sridharan, learned counsel for the 7<sup>th</sup> respondent.

2. With the consent of learned counsel on either side, this writ petition itself is taken up for final disposal.

3. The petitioners seek for issuance of a writ of certiorarified mandamus to quash the order passed by the 1<sup>st</sup> respondent dated 23.06.2016 and consequently direct the 1<sup>st</sup> respondent or any other competent authority to be nominated by the 1<sup>st</sup> respondent to consider the claims of the petitioners for rectification of erroneous reclassification of the land measuring an extent of 18 cents in old S.Nos.387/1 & 387/2 and in T.S.No.49/1 in Kodambakkam Village, Mambala-Guindy Taluk from that of public road into private patta land (private passage of the petitioners).

4. This Court elaborately heard the learned counsel on either side and carefully perused the materials placed on record.

5. In the impugned order, the 1<sup>st</sup> respondent rejected the petitioners' revision petition on the ground that in an earlier writ petition filed by the 7<sup>th</sup> respondent Association in W.P.No.30052 of 2008 an order was passed on 22.04.2009 directing the parties to approach the Civil Court. Therefore, the petitioner was also directed to approach the Civil Court. The

correctness of this impugned order needs to be tested before this Court.

6. As pointed out earlier, the 7<sup>th</sup> respondent Association filed the said writ petition to forbear the respondents which included the petitioner herein from reclassifying or re-notifying the existing public road in Government poromboke land in T.S.No. 50 and T.S.No.18 in Block No.119 of Koadambakkam Village, Mambalam-Guindy Taluk, Corporation Division No.128. The Court did not grant the relief sought for by the 7<sup>th</sup> respondent Association, but disposed of the writ petition directing the Association to go before the Civil Court, if they are aggrieved. The 7<sup>th</sup> respondent Association did not file any appeal against the said order, but one of the person responsible for the lay out viz., Mr.I.David filed a writ appeal before the Hon'ble First Bench in W.A.No.694 of 2010. The writ appeal and writ petition were dismissed giving liberty to Mr.I.David, the writ appellant as well as the 7<sup>th</sup> respondent Association to approach the Civil Court, if they so deemed fit. Neither Mr.I. David nor the 7<sup>th</sup> respondent Association availed such liberty granted by the Hon'ble First Bench. Thus, it is clear that it is 7<sup>th</sup> respondent Association, which was granted liberty to approach the Civil Court and not the petitioner, because the petitioner, at no point of time, sought for relief by way of the writ petition. Therefore, rejecting the writ petitioner's revision petition is incorrect.

7. Having held so, this Court need to examine as to what are the documents, which have been placed by the petitioner to substantiate his claim. The petitioner placed reliance on the proceedings of the Principal Secretary, Commissioner of Land Administration, Chennai dated 19.03.2012. Though in the penultimate paragraph of the order, the Commissioner of Land Administration has directed the matter to be resolved by the Civil Court, in paragraph 5, it has been mentioned that the Assistant Director (Survey and Land Records), Chennai in his order dated 28.04.2010 in E1/662/2010, after referring to the order passed in the writ petition filed by the 7<sup>th</sup> respondent Association, has concluded that patta land to an extent of 18 cents were wrongly included in T.S.No.50 and classified as road poromboke during the town survey. Further, the Assistant Director has ordered to make correction in Town survey land records in respect of T.S.Nos. 50 and 49/1. Though the Commissioner of Land Administration took note of the same, yet directed the parties to approach the Civil Court.

8. The District Revenue Officer, while passing the order dated 03.12.2016, as against which, the petitioner filed a revision petition before the 1<sup>st</sup> respondent, has also taken note of the order passed in the writ petition filed by the 7<sup>th</sup>

respondent Association viz., W.P.No.30052 of 2008 and writ appeal in W.A.No.694 of 2010 and directed the petitioner to approach the Civil Court.

9. In the considered view of this Court, the authorities have wrongly approached the issue without taking note of the fact that at no point of time, the writ petitioner sought for any relief by way of approaching the Court under Article 226 of the Constitution of India rather it is the 7<sup>th</sup> respondent Association and one of its member, who had approached the Court and both the writ petition and writ appeal were dismissed and if they are aggrieved, liberty was granted to the Association/member to approach the Civil Court. Therefore, the 1<sup>st</sup> respondent as well as the 2<sup>nd</sup> respondent has committed an error in directing the petitioner to approach the Civil Court by referring to those two orders.

10. The petitioner's case is very simple as he would state that while developing the lay out an area has already been earmarked as road and 18 cents represented by promoters/petitioner as a private passage. As culled out above, the Assistant Director, Survey and Land Records states that mistakes had occurred during town survey and the land has been wrongly classified as road poromboke.

11. In the counter affidavit filed by the Zonal Officer -Z-X, Greater Chennai Corporation, they would admit that an extent of 16 feet X 208 feet length remained as a private passage. Further, it has been stated that the land in question has not been handed over to the respondent Corporation. Once again, the respondent Corporation states that the petitioner has to approach the Civil Court, which approach is incorrect. The learned counsel for the 7<sup>th</sup> respondent Association referred to the reply given to the Association under the Right to Information Act dated 28.08.2008. The reply states that in the revenue records T.S.No.50 and T.S.No.18 in block No.119 have been shown as salai poromboke - Chennai Corporation.

12. The learned Standing Counsel for the respondent Corporation has explained by stating that the query raised by the Association is with regard to the entire extent of T.S.No.50 and T.S.No.18 and an extent of 16 feet X 208 feet continuous to remain as a private passage. In any event, the reply given under the RTI Act could be relevant only with regard to question posed before the Public Information Officer and nothing more. The learned counsel for the petitioner submitted that there is a joint survey report, which will be available in the files of the respondents 2 and 3, which was drawn on 03.12.2008 and the report clearly supports the stand taken by the petitioner to state that the area is a private passage.

13. Thus, the above controversy can be resolved by only a detailed enquiry be conducted by the District Revenue officer. As mentioned above, the approach of the 1<sup>st</sup> respondent as well as the 2<sup>nd</sup> respondent in rejecting the petition and revision filed by the petitioner is erroneous.

14. In the light of the above, the writ petition is allowed and the impugned order is set aside and the matter is remanded to the 2<sup>nd</sup> respondent for fresh consideration. The 2<sup>nd</sup> respondent shall issue notice to the petitioner and the 7<sup>th</sup> respondent Association and afford an opportunity of personal hearing to the petitioner to produce all documents to establish his claim that the passage is a private passage. After enquiring into it and after perusal of the documents, the Assistant Director, Survey and Land Records may be requested to conduct a survey, while doing so, he shall take into account the earlier proceedings wherein, it has been clearly stated about the report of the Joint Director dated 07.12.2016 and the material in the file should be examined and a reasoned decision be taken on merits and in accordance with law. The above direction be complied with by the 2<sup>nd</sup> respondent within a period of four (4) months from the date of receipt of a copy of this order. No costs. Connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

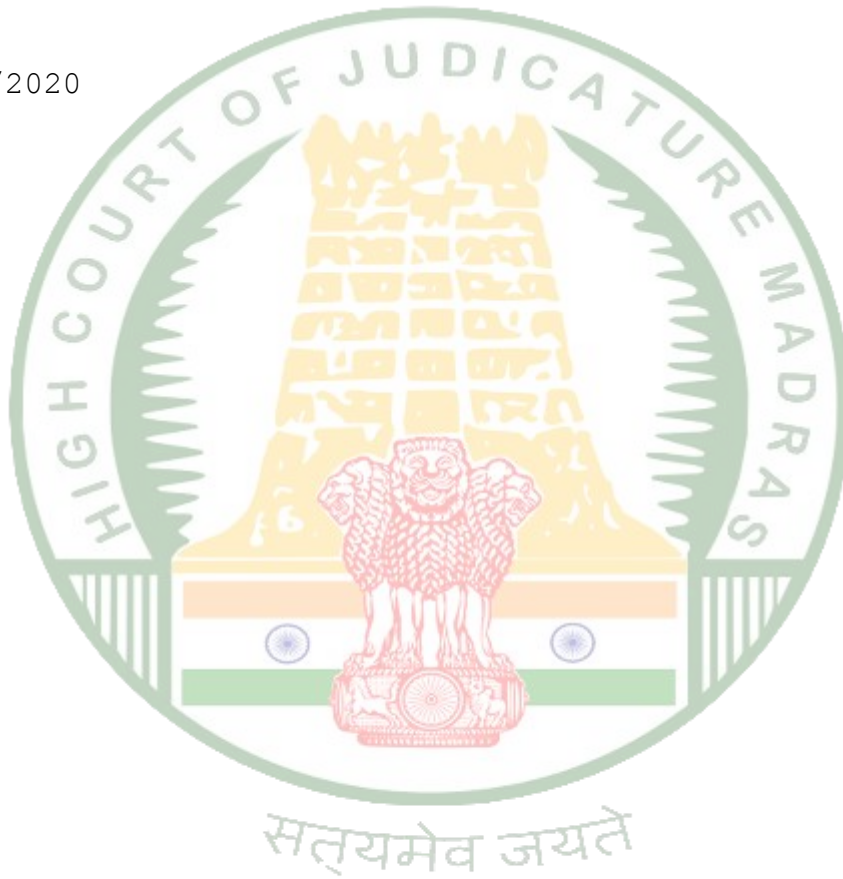
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Ripon Building, Chennai - 600 003.

+2ccs to Mr.C.V.Subramanian, Advocate, S.R.No.15865  
+1cc to Mr.G,V,Sridharan, Advocate, S.R.No.15924  
+1cc to the Government Pleader, S.R.No.16211

W.P.No.23017 of 2016

SR(CO)  
KKV/16/06/2020



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