

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2020

CORAM :

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

W.P.No.17906 of 2020

M.P.Ramasamy

...Petitioner

Vs.

1. The District Collector,
Namakkal District,
Namakkal.
2. The Revenue Divisional Officer,
Namakkal Division,
Namakkal.
3. The Thashildar,
Rasipuram Taluk,
Rasipuram,
Namakkal District.
4. The Executive Officer,
Vennandur Town Panchayat,
Vennandur Post,
Rasipuram Taluk,
Namakkal District.

5. V. Masilamani

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the respondents 1 to 4 to take necessary action on the representation of the petitioner dated 27.07.2020 within a stipulated time.

For Petitioner : Mr.R.Jawahar
For R1 to R4 : Mr.V.Jayaprakash Narayanan
State Government Pleader

O R D E R

(Order of the Court was made by M. SATHYANARAYANAN, J.)

(Through Video Conferencing)

The petitioner claims to be the purchaser of the land in Survey Nos.193/23, 193/25 and 193/16, situated at Vennanthur Village, Namakkal District, by registered sale deeds, and according to him, the lane running in Survey No.193/26 of the said village, belongs to Government, and it is situated on the eastern side of his property and there is also a pathway in Survey No.193/30, which is also situated on the eastern side of his property. It is the case of the petitioner that the 5th respondent has encroached upon the lane portion in Survey Nos.193/26 and 193/30 and constructed a wall abutting his land and restrained him from enjoying the lane, and a civil litigation in this regard has also ended in dismissal.

2.It is the specific case of the petitioner that, on account of the encroachment made by the 5th respondent in the land in Survey No.193/26, which belongs to the Government, the air, way and light to his property has been affected, and in this regard, he has also submitted a representation, dated 27.07.2020, to the respondents, and since no response is forthcoming, he is constrained to approach this Court by filing this writ petition.

3.Heard the learned counsel appearing for the petitioner and also perused the materials placed, more particularly, the judgment dated 23.01.2020, in A.S.No.2 of 2019 on the file of the Subordinate Court, Rasipuram, and it is relevant to extract Para Nos.17 and 18 of the same.

"17.Another contention of the appellant is that the BC lane is also commonly belongs to the plaintiff and the defendants. The defence of the defendants is that the BC lane is not a common lane but it belongs to the 1st defendant alone. In this regard, the learned counsel for the respondent drawn the attention of this court towards Ex.B1 Adangal. Wherein it reveals that the 1st defendant is in

possession over the land in S.No.193/30 which is shown as BC lane in the rough sketch. Therefore the plaintiff failed to prove that the BC portion of lane is a common lane and the plaintiff is having the usage right over the same.

18. On careful consideration of the evidence adduced by the plaintiff and the defendants, it reveals that the AB portion of land belongs to the Government and the plaintiff failed to establish his long time usage over the same. The plaintiff failed to prove that he is using the AB lane of 50 years and also failed to establish that the predecessors also using the AB lane for more than 50 years. The Ex.B1 categorically prove that the BC portion belongs to the 1st defendant. Admittedly the AB portion belongs to the government and if at all the defendants erecting any constructions in a government promboke land, the plaintiff can approach the government to remove the obstructions in a village promboke land. The plaintiff had not taken any steps to implead to the government as the party to the proceedings. Therefore the trial court rightly concluded the issue no 2 and 3 against the plaintiff and no necessity arises to interference. The AB lane being the government promboke land he could have approached to government to remove the obstructions made by the defendants which the plaintiffs fails. Therefore the trial court rightly concluded that the plaintiff is not entitled for any decree as he prayed. There is no discrepancy seen in the decision of the trial court and there is no necessity to interfere with the judgment of learned trial court. The plaintiff failed to establish his case before the trial court and hence this court not inclined to either modify or set aside the judgment of learned trial court."

4.A perusal of the judgment would disclose that the petitioner, who is the plaintiff/appellant in the civil proceedings, has failed to prove that he is using the 'AB' lane (Survey No.193/26) for 50 years and he has also failed to establish that his predecessors were also using the 'AB' lane for more than 50 years and Ex.B1 also categorically proved that the 'BC' portion (Survey No.193/30) belongs to the 1st defendant, viz., the 5th respondent. Curiously, the petitioner has taken a similar stand before this Court also in the form of averment in Para No.4 of the affidavit filed in support of this writ petition, and in the considered opinion of this Court, the present writ petition is nothing but an abuse of process of

Court, and this Court finds absolutely no merit in this writ petition and the same deserves dismissal.

Accordingly, this writ petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector,
Namakkal District,
Namakkal.
2. The Revenue Divisional Officer,
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Rasipuram Taluk,
Namakkal District.

+1cc to Mr.R.Jawahar, Advocate, SR40488

CO(RR)
BDL/07/01/2021

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