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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

AND

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A.NO.1494 OF 2015

1. The District Collector,
Namakkal District.
2. The Tahsildar,
Taluk Office,
Tiruchengode Taluk,
Namakkal District.
3. The Commissioner,
Tiruchengode Municipality,
Tiruchengode,
Namakkal District.

... Appellants

.Vs.

1. T.K.Deivasigamani
2. Saravana Kumar
3. Paneer
(Respondents 2 and 3 were suo motu
impleaded vide order dated 6.7.2021
passed in W.A.No.1494/2015)

... Respondents

PRAYER:-

Writ Appeal filed under Clause 15 of the Letters Patent against the Order of the learned Single Judge made in W.P.No.12963 of 2006 dated 28.03.2014.

PRAYER IN W.P.NO.12963 OF 2006:-

Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus to direct the 2nd respondent to transfer the land in Survey No.46/1 and 46/2 in favour of Municipality enabling the 3rd Respondent to lay a thar tapped 16 feet road in Survey Nos.46/1, 46/2 and 49 as per



the direction of the first respondent in his order O.Mu.9503/04/16, dated 22/04/2004.

For Appellants : Mr.T.Arunkumar
Government Advocate

For 1st Respondent : Mr.N.Manokaran

For Respondents 2 & 3 : Mr.P.Mani

JUDGMENT

(Judgment of the Court was pronounced by T.RAJA.J)

This Writ Appeal has been directed against the impugned order passed in W.P.No.12963 of 2006 dated 28.03.2014, in and by which, the learned Single Judge, while disposing of the writ petition filed by the 1st respondent herein, directed the Collector, Namakkal District, to take appropriate action in pursuant to his proceedings in O.Mu.No.9503/04/L6 dated 22.04.2004 intimated to him that appropriate steps would be taken to transfer the land in Survey Nos.46/1 and 46/2 in Kailasampalayam Main Road, Tiruchengode Taluk, Namakkal District in favour of the Municipality for laying Thar Tapped 16 feet road.

2. Learned Government Advocate appearing for the appellants submitted that during the pendency of this Writ Appeal, the respondents 2 and 3 were impleaded suo motu by this Court by an order dated 06.07.2021 as the legal heirs of one Natesan and Murugesan, sons of Ramasamy Gounder and the said Ramasamy Gounder along with one Chellammal filed a civil suit in O.S.No.84/1984 before the District Munsif Court, Tiruchengode seeking declaration, declaring that 16 feet width road in the land covered in Old Survey Nos.64/1 and 64/2 and new Survey Nos.46/1 and 46/2 to be declared as patta lands belong to them and for a consequential injunction, restraining the defendants from letting the sewerage water into the house of the plaintiffs and the same was decreed in favour of the plaintiffs therein. The learned District Munsif, Tiruchengode also has passed a decree and judgment against the 1st respondent herein in O.S.No.655/1985 holding that the land covered in Old Survey Nos.64/1 and 64/2 and New Survey Nos.46/1 and 46/2 in the particular locality belong to the respondents 2 and 3 and they are patta lands. Therefore, in view of the two decrees passed by the learned District Munsif, Tiruchengode in which the appellants were not parties, the learned Government Advocate stated that it is appropriate for the parties concerned to work out their remedy in the manner known to law.



3. It is, at this stage, learned Counsel for the 1st respondent placing on record, a decision of a Division Bench of this Court in J.Jagadesh vs. The Tahsildar, Erode and another reported in CDJ 2018 MHC 5446 stated that ''Nilaviyal Vandipathai'' running through any patta land is only a Government land. Therefore, when a piece of the road has been properly classified as ''Nilaviyal Vandipathai'', even if it is running through a private land, it has to be construed only as a Government Land. Therefore, the decree and judgment passed by the learned District Munsif, Tiruchengode in O.S.No.84 of 1984 dated 12.11.1990 cannot be given effect to. On this score, he further submitted that applying the ratio laid by this Court in the decision cited supra, a direction may be given to the appellants to lay the Thar Road by transferring the land-in-question as proposed by the District Collector.

4. Heard the learned Counsel for the respondents 2 and 3.

5. Considering the facts and circumstances of the matter and also considering the decree and judgment passed by the learned District Munsif in O.S.No.84/1984 dated 12.11.1990 and in O.S.No.655/1985 dated 12.11.1990, liberty is given equally to both the 1st respondent herein as well as the respondents 2 and 3 to work out their remedy in the manner known to law as the appellants were not made as parties in the above said civil suits.

6. With the above observation and direction, this Writ Appeal is disposed of. No costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

tsi

To

1. The District Collector,
Namakkal District.
2. The Tahsildar,
Taluk Office,
Tiruchengode Taluk,
Namakkal District.



3. The Commissioner,
Tiruchengode Municipality,
Tiruchengode,
Namakkal District.

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+1cc to Mr.P.Mani, Advocate, S.R.No.55135

W.A.NO.1494 OF 2015

VSN-II (CO)
PBS/26/11/2021