

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2021

CORAM :

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

W.P.No.1838 of 2021
and
W.M.P.No.2073 of 2021

Mathaiyan Petitioner

Vs.

1.The District Collector,
Salem,
Salem District.

2.The Revenue Divisional Officer,
Mettur Taluk,
Salem District.

3.The Thasildar,
Mettur Taluk,
Salem District.

4.The Assistant Divisional Engineer,
Highway Department,
Construction and Maintenance,
Omalur,
Salem District.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records pertaining to the impugned order passed by the 4th respondent in Ka.No.Case/2020/u dated 05.01.2021 and quash the same.

For Petitioner : Mr.E.Kannadasan
for Mr.M.Subash

For R1 to R3 : Mr.S.Kamalesh Kannan
Government Advocate

For R4 : Mr.M.Loganathan
Standing Counsel

O R D E R

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

The petitioner claims to be residing along with his family members for more than 75 years in the landed property comprised in Survey No.247/1A, Mecheri Village, Mettur Taluk, Salem District, and it is also subject to statutory levies in the name of his wife Parvathi. The petitioner claims to have put up a thatched shed and planned to construct a RCC construction and he has also been conferred with the benevolent schemes of the Government of Tamil Nadu, and he has also been issued with Ration Card, Aadhar Card and Voter Identity Card. The petitioner alleges that, at the behest of some politicians and high ranking officials, his possession is sought to be disturbed. Therefore, he filed a suit in O.S.No.19 of 2013 on the file of the Court of District Munsif, Mettur, against the District Collector, Salem, the Tahsildar, Mettur and the Executive Officer, Selection Grade Town Panchayat, Mecheri, Mettur Taluk, for permanent injunction restraining them from in any manner disturbing the petitioner's peaceful possession and enjoyment in the suit property either by evicting him from the property by using force or by any other means. The suit after contest came to be decreed as prayed for, vide judgment and decree, dated 09.11.2018. No further appeal has been filed challenging the said judgment, and therefore, it had become final.

2.The petitioner would further aver that, one K.Chinnusamy, who had an axe to grind, gave a representation as if the petitioner and his family members have encroached upon the Government land, and in this regard, he has filed W.P.No.16720 of 2019, and this Court, while disposing of the said writ petition, vide order dated 02.12.2019, observed that "since the 8th respondent along with six others filed a comprehensive suit for declaration of title in respect of the property in question, if they are so advised, they are at liberty to work out their remedy before the said forum and pendency of the suit, in the absence of interim order, is not a bar on the part of the official respondents to proceed against the encroachments in respect of the lands in question, in accordance with law" and stipulated an outer time limit. It is further averred by the petitioner that, based on the said order, the 4th respondent has issued the eviction notice under Section 28(2) of the Tamil Nadu Highways Act, 2001, and challenging the same, one M.Kalaiselvan filed W.P.No.19262 of 2020 and it has been disposed of with a direction to consider and dispose of the petitioner's reply in accordance with law within a stipulated time frame. The 4th respondent, thereafter, issued an order dated 05.01.2021 under Section 28 (2) of the Tamil Nadu Highways Act, 2001, and challenging the legality of the same, the present writ petition is filed.

3.Learned counsel appearing for the petitioner would

submit that, in the light of the long usage and possession for

several decades and that the petitioner has been conferred with various benevolent schemes of the Government of Tamil Nadu and that apart, the petitioner has also been issued with Ration Card, Aadhar Card and other Cards, it may not be fair on the part of the respondents to allege the land in question in occupation of the petitioner as a "waterway/waterbody", and further points out that the entire area has become a residential colony, and the land and premises of the petitioner alone has been targeted, and therefore, prays for appropriate orders.

4.Per contra, Mr.S.Kamalesh Kannan, learned Government Advocate, appearing on behalf of the respondents 1 to 3, has drawn the attention of this Court to the proceedings of the 4th respondent, dated 05.01.2021, and would submit that, with regard to the points raised, point by point rebuttal has been given, and since the provisos to Section 28(2) of the Tamil Nadu Highways Act, 2001, have been complied with in letter and spirit, it may not be open to the petitioner to express any grievance, and prays for dismissal of the writ petition. Attention of this Court was also invited to the counter affidavit of the 4th respondent.

5.This Court has carefully considered the rival submissions and also perused the materials placed before it.

6.A perusal of the counter affidavit of the 4th respondent would disclose that the land comprised in Survey No.247/1A is classified as "Road Margin" in the A-Register as confirmed by the 3rd respondent vide his letter, dated 25.06.2020, and thereafter, the Highways Department sought a clarification regarding the classification of the said land and in response to the same, the Sub-Collector, Mettur, has sent a communication, dated 22.10.2020, stating among other things that the entry "Road Margin" was changed to "Natham" for S.No.247/1A fraudulently, and it has been removed and the original classification as "Road Margin" has been restored by the Sub-Collector vide order dated 07.10.2020. It is also the stand of the 4th respondent that, despite the suit in O.S.No.19 of 2013 came to be decreed in the favour of the petitioner, the decree also grants liberty to the concerned official respondents to proceed further in accordance with law and accordingly, due process of law has been followed and in compliance of the earlier orders passed in the writ petition, the objections have been considered in detail, and hence, prays for dismissal of the writ petition.

7.In the considered opinion of this Court, the sons of the petitioner as well as the petitioner herein had been granted sufficient opportunity to put forth their objections, and a perusal of the impugned communication of the 4th respondent, dated 05.01.2021, would disclose that each and every ground has been analysed and considered in detail and a conclusion has been reached for removal of encroachment.

Though a faint attempt was made by the learned counsel appearing for the petitioner by submitting that since the petitioner is in possession and enjoyment of the land for several decades, it may not be fair and equitable on the part of the official respondents to evict him, if the petitioner is very sure of his prescriptive right, he would have availed the common law remedy, and so far, he has not done so.

8. Since due process of law has been followed and that the impugned order passed by the 4th respondent also reflects due and proper application of mind to all the objections raised, this Court finds no error apparent on the face of the record or any infirmity in the reasons assigned in the impugned order, and finds no merits in the present writ petition. In the result, this writ petition is dismissed. However, in the circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

9. After the dismissal of the writ petition, the learned counsel appearing for the petitioner undertakes to file an affidavit of undertaking praying for an outer time limit of three months from today to vacate and deliver the vacant and peaceful possession of the land in question and prays for short accommodation.

10. Post the matter on 11.03.2021 under the caption "For Affidavit of Undertaking". Till such time, the 4th respondent shall defer further proceedings in terms of the impugned order dated 05.01.2021.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

सत्यमेव जयते

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To

1. The District Collector,
Salem,
Salem District.

2. The Revenue Divisional Officer,
Mettur Taluk,
Salem District.

3. The Thasildar,
Mettur Taluk,
Salem District.

WEB COPY

4.The Assistant Divisional Engineer,
Highway Department,
Construction and Maintenance,
Omair,
Salem District.

Copy to:
The Section Officer,
Contempt Section, High Court,
Madras-104.
(For posting Cont.P.6181/2020 and 18103/2021)

+1cc to Mr.M.Subash, Advocate SR.14265

W.P.No.1838 of 2021

SV(CO)
CB(17/03/2021)



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