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IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 20.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.34879 of 2015
and W.M.P.No.2772 of 2019

N.Rajammal ... Petitioner

-Vs-

1.The District Collector
Namakkal District.

2.The Tahsildar
Rasipuram Taluk
Rasipuram, Namakkal District.

3.Arulselvan .. Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus forbearing the respondents 1 and 2 from clearing the channel by removing the grown up trees standing in the banks of the channel, running north to south on the western side of the petitioner's patta land in Survey No.25/1A of Pattanam Village for using it as a pathway or cart track for the sole benefit of the 3rd respondent.

For Petitioner : Mr.K.A.Mariappan

For Respondents: Ms.Akila Rajendran,
Government Counsel
-for RR 1 and 2
No appearance - for R3

O R D E R

The prayer sought for herein is for a Writ of Mandamus forbearing the respondents 1 and 2 from clearing the channel by removing the grown up trees standing in the banks of the channel, running north to south on the western side of the petitioner's patta land in Survey No.25/1A of Pattanam Village for using it as a pathway or cart track for the sole benefit of the 3rd respondent.



2. It is the case of the petitioner that, the petitioner is having agricultural land at S.No.64/2, Kallankulam village measuring about 2.80 Acres and also at S.No.25/1A at Pattanam Village measuring 2.74 Acres. Though the land comes under different villages, since both are adjacent lands, the petitioner, by putting a small bund in between, was carrying on agricultural activities in the entire land from time immemorial. In order to draw excess water during heavy rainy season, the predecessor-in-title in S.No.25/1A, made an artificial channel and in the banks of the said channel, the predecessor-in-title planted trees, which are now grown up and giving shelter to the workers during the time when the agricultural activities were going on in the said lands.

3. When that being so, the third respondent, who happened to be the adjacent land owner, wanted to utilise the channel bund as a pathway or cart track and therefore, in an attempt to make a pathway or cart track in the banks of the channel situated in the patta lands in S.No.25/1A, he approached the Civil Court and filed a suit in O.S.No.108 of 2010 on the file of the District Munsif, Rasipuram against the petitioner and other family members, who are joint owners of the property in question.

4. However, the said suit was dismissed by the trial Court with costs, as against which the third respondent preferred an appeal in A.S.No.9 of 2014 on the file of the Sub Court, Rasipuram, where the said appeal is stated to be pending till date.

5. In the meanwhile, since the third respondent having failed in his attempt to get a decree from the Civil Court for making use of the banks of the channel concerned at the patta lands of the petitioner as a cart track or pathway, he seems to have given a representation to the official respondents ie., the revenue authorities, who, on receipt of the same, wanted to enter upon the property of the petitioner ie., S.No.25/1A in the guise of clearing the channel by cutting the trees standing therein and to make a pathway and enabling the third respondent to create a cart track on the channel bund. Throttling the said attempt, the petitioner has given a notice. However, the official respondents has not stopped with that, since they wanted to proceed further as they proposed, pursuant to the representation given by the third respondent. Therefore, the petitioner having no other option, has approached this Court by filing the present writ petition with the aforesaid prayer.

6. At the time of admission of this writ petition, this Court granted an interim order of status quo to be maintained



and the said order still continues.

7. When this writ petition was taken up for final hearing, Mr.K.A.Mariappan, learned counsel appearing for the petitioner, having reiterated the aforesaid facts, would submit that, it is an admitted fact even according to the counter affidavit filed by the second respondent that, the property at S.No.25/1A is a private property ie., Patta land of the petitioner. Therefore, if at all any channel is there, the same would have been made only by the predecessor-in-title of the petitioner artificially to draw water during heavy rainy season. Therefore, it cannot be treated as public channel or it can never be treated as a channel supplying water to anybody's land including the third respondent's land and at no point of time the banks of the channel was utilised either as a pathway or as a cart track, except the exclusive use by the petitioner.

8. Therefore, the learned counsel for the petitioner would submit that, the present attempt made by the third respondents after having failed in his first attempt of filing a civil suit in the concerned Court is a vain attempt and pursuant to the said vain attempt, since the official respondents especially the second respondent office trying to encroach upon the property belonging to the petitioner in S.No.25/1A, the petitioner had approached this Court by filing the present writ petition with the aforesaid prayer. Therefore, the learned counsel for the petitioner seeks the indulgence of this Court for a suitable direction to the official respondents.

9. On the other hand, Ms.Akila Rajendran, learned Government Counsel appearing for the respondents, by relying upon the averments made in the counter affidavit, made submissions that, if at all any channel is there and the same is meant for any public use, where the banks are used for cart track, the same can very well be restored by the revenue authorities, only in that context the revenue authorities made an attempt to make a cart track as requested by the third respondent. However, in this regard if any civil suit was filed by the third respondent, where the suit was dismissed, as against which if any appeal is filed, unless and until the appeal is decided one way or the other, the revenue authorities may not poke their nose at present in the Survey No.25/1A for the purpose of allowing any cart track or pathway by cutting the trees already there in the banks of the channel. Therefore, to that extent, the stand of the revenue authorities can be taken note of, she contended.

10. Though notice has been served on the third respondent and his name and address has been shown in the cause list, there is no representation for the third respondent.



11. I have considered the submissions made by the learned counsel appearing for both sides and have perused the materials placed on record.

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12. In the counter affidavit filed by the second respondent Tahsildar, he has stated the following,

" 11) With regard to the averments in para 2 and 3, it is submitted that the land in S.F.25/1A stands registered as patta land in the name of the writ petitioner N.Rajammal. But, the "Odai" being a Plan Marked Detail, its area and the trees standing on the banks of "Odai" belong to Government."

13. Though it is the stand of the revenue authorities that, the property at S.No.25/1A stands registered as Patta land in the name of the writ petitioner, it has further been stated by the second respondent that the "Odai" being a Plan Marked Detail, its area and the trees standing on the banks of "Odai" belong to Government. The said statement made by the second respondent is not based on any record. Therefore, this Court feels that the land in question ie., S.No.25/1A, if it belongs to the petitioner and this position having been accepted by the second respondent in his counter, if any channel artificially created for the purpose of drawing excess water during heavy rainy season, it cannot be treated as a channel for public purpose and in this regard, even though an attempt has been made by the third respondent by filing a suit, treating it as a channel and the banks can be treated or utilised as cart track or pathway, the Civil Court has rejected the claim of the third respondent, as against which even though the third respondent has filed a first appeal, the same is yet to be decided and a final decision is yet to be made.

14. Therefore, at this juncture this Court feels that, unless a conclusive decision comes from the first appellate Court in A.S.No.9 of 2014 on the file of the Sub Court, Rasipuram, no further precipitative action can be taken by the revenue authorities either to form a cart track on the banks of the channel or to cut down the trees in the name of clearing the channel.

15. In that view of the matter, this Court is inclined to dispose of this writ petition with the following order.

- That there shall be a direction to the respondents 1 and 2 not to interfere with the exclusive possession of the petitioner insofar as the land at S.No.25/1A at Pattanam village including the artificial channel



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available there with banks and trees.

- However, it is open to the revenue authorities to take further persuasive action in accordance with law depending upon the outcome of the decision from the first appellate Court ie., the Sub Court, Rasipuram in A.S.No.9 of 2014 filed by the third respondent.
- Till such time, no precipitative action in the said land referred to above belonging to the petitioner shall be attempted by the revenue authorities ie., the respondents 1 and 2.

16. With the above directions and observations, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

KST

To

1.The District Collector
Namakkal District.

2.The Tahsildar
Rasipuram Taluk
Rasipuram, Namakkal District.

+1cc to Mr.K.A.Mariappan, Advocate, S.R.No.34878
+1cc to the Government Pleader, S.R.No.34991

W.P.No.34879 of 2015

EV(CO)
CB(23/08/2021)