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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 15.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.14479 of 2021 and
WMP No.15361 of 2021

Muthusamy

.... Petitioner

Vs.

1. The District Collector, Namakkal.
2. The Block Development Officer,
Rasipuram, Namakkal District.
3. The President, Moolakadu Panchayet,
Masakkalipatti Post, Rasipuram Taluk,
Namakkal District.

4.T.P.Sekar

... Respondents

Prayer: Writ petition filed under Section 226 of the Constitution of India to issue a writ of Mandamus forbearing the respondents 2 and 3 or their men or agents from laying tar road over the unauthorized housing plots which is existing in the petitioner's patta land comprised in SF No.77/5A at Moolakadu Village, Rasipuram District, Namakkal.

For petitioner : Mr.R.Nalliyappan

For respondents : Mr.A.Selvendran, Gov. Advocate
for R1
Mr.C.Harsh Raj for R2 and R3.

ORDER

This writ petition has been filed to issue a writ of Mandamus forbearing the respondents 2 and 3 or their men or agents from laying tar road over the unauthorized housing plots which is existing in the petitioner's patta land comprised in SF No.77/5A at Moolakadu Village, Rasipuram District, Namakkal.

2. According to the petitioner, he is the owner of the property comprised in SF NO.77/5 at Moolakadu Village, Rasipuram District, Namakkal District to an extent 2.20 acres. A civil



dispute had arose between him and the fourth respondent with regard to the sub-division made in S.F.No.77/5 as 77/5A1 and 77/5A2, which is covered the agricultural land, including a portion of the property belongs to the petitioner, to an extent of 57 cents. Therefore, on the application of the petitioner, the Sub Collector, Namakkal had cancelled the afore said sub-division. Against which, the one Senthilkumar filed a writ petition in W.P.No.28771 of 2012 before this court and this court vide order dated 17.04.2012 had set aside the above order and remanded back to the Sub Collector, directing him to pass order, after providing opportunities. Finally, based on the sale deeds, the Sub Collector had cancelled the Sub Division on 21.03.2016. Consequently, the Tahsildar, Rasipuram was directed to sub-divide the property based on the title deeds of the petitioner and the fourth respondent. On inspection with the help of Taluk Surveyor, the Tahsildar found that the 4th respondent has encroached the property of the petitioner to an extent of 57 cents and he had converted the same into housing plots. Further, on the suit filed by the petitioner in O.S.No.200 of 2008, seeking permanent and mandatory injunction with respect to the subject matter of the property, the Trial Court vide decree dated 8.11.2017 had decreed the suit as prayed for and ordered for restoration of the possession. Against the afore said decree, the 4th respondent had filed A.S.NO.32 of 2018 and the appeal was allowed in part by holding that the petitioner is entitled for declaration and possession with respect to the properties stands in the name of the petitioner vide sale deed dated 23.11.1981. The fourth respondent has not filed any second appeal so far. The petitioner has also filed execution proceedings and the same is now pending before the Principal District Judge, Namakkal.

3. Now, the petitioner came to know that the 4th respondent has filed an application for the respondents R2 and R3 to lay tar road to the unauthorised housing plots existing in SF No.77/5A at Moolakadu Village, Rasipuram District, Namakkal, which existing in the petitioner's patta land and on considering the above said application, the second and third respondents are taking steps to lay tar road. Hence, the petitioner has issued a legal notice dated 28.09.2020 to the respondents R1 to R3 not to lay tar road in the petitioner's property and the same was also received by them. Later, on the direction given by the first respondent, the second respondent asked the petitioner for enquiry and to submit the documents to show his title over the said properties and the petitioner has also produced the same before them. Subsequently, the second respondent directed the third respondent not to lay tar road over the encroached area made by the fourth respondent. However, due to the political pressure caused by the 4th respondent, the third respondent is taking hectic steps to lay



tar road. Hence this writ petition.

4. The learned Government Advocate appearing for the first respondent submitted that the petitioner has given only a legal notice to the respondents, which cannot be entertained for seeking the relief of Writ of Mandamus. He further submit that if the petitioner give representation before the second respondent, it will be considered by the authorities concerned in accordance with law.

5. At this juncture, the learned counsel appearing for the second and third respondents submitted that the disputed property is come under the jurisdiction of the Block Development Officer, Vannandur, Namakkal District and hence, direction may be given to the petitioner to submit his representation before the said office.

6. Inview of the above said discussion, this court directs the petitioner to make representation before the Block Development Officer, Vennandur, Namakkal District, within a period of two weeks from the date of receipt of a copy of this order and on such representation being made by the petitioner, the above said Block Development Officer is directed to consider the same in accordance with law, and pass appropriate order, as early as possible.

7. With the above direction, this writ petition is disposed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

mst

To

1.The District Collector, Namakkal.

2.The Block Development Officer,
Rasipuram, Namakkal District.

3.The Block Development Officer,
Vennandur, Namakkal District.



4. The President, Moolakadu Panchayet,
Masakkalipatti Post, Rasipuram Taluk,
Namakkal District.

+1cc to the Government Pleader, S.R.No.34020

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KV (CO)
CB(06/08/2021)