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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2021

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THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P. No. 19411 of 2014

L.Vivekanandan

... Petitioner

-vs-

1. The District Revenue Officer,
Salem District.
2. The Revenue Divisional Officer,
Attur, Salem District.
3. The Tahsildar,
Attur, Salem District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus directing the first respondent to consider and pass appropriate orders on the representation dated 23.09.2013 made by the petitioner herein within stipulated time period.

For Petitioner : Mr.Sathish
for Mr.T.Sundaravadanam

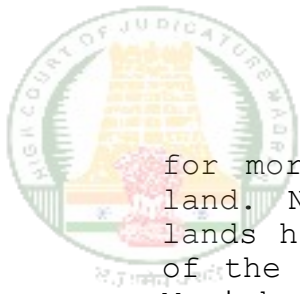
For Respondents: Ms.Akila Rajendran
Counsel for Government

O R D E R

The prayer sought for herein is for a Writ of Mandamus directing the first respondent to consider and pass appropriate orders on the representation dated 23.09.2013 made by the petitioner herein.

2. The case of the petitioner is that, the petitioner is having property, i.e., land in S.No.7/2F of Abinavam Village, Attur Taluk, Salem District.

3. According to the petitioner, in order to reach the property, the petitioner had been using the land at S.Nos.5,6,17&18 of the same Village as a pathway or cart track



for more than 20 years and that is the only way to reach the land. Not only the petitioner's land but also several people lands had located in that locality. However, recently the owners of the said land one Kandasamy Naicker, Subramaniya Naicker and Manicka Padyatchi have prevented the petitioner and others from the said land from using the pathway or cart track. In this regard, the petitioner has given representations to the revenue authorities, i.e., respondents herein, on 23.09.2013 to the first respondent and on 01.02.2012 to the second respondent. Since none of the representations given to the respondents have been considered, that no positive action was taken on the side of the respondents, the petitioner, in order to consider the said representations and to pass orders thereon on merits, had approached this Court by filing the present Writ Petition with the aforesaid prayer.

4. Heard Mr.Sathish, learned counsel appearing for the petitioner, who would submit that, the land in question, i.e., S.Nos.5,6,17&18 of the same Village, the petitioner and others, who are having lands in the nearby locality, are using it either as a pathway or cart track for more than two decades and all of a sudden, the private parties have prevented the petitioner from using the land. Therefore, in this context, if at all the revenue authorities, i.e., either Revenue Divisional Officer or Tahsildar enquired the matter with the Village people including the private parties, it may reveal the fact that, the petitioner and others are using the said pathway or cart track and accordingly, the said land for the purpose of pathway or cart track can be earmarked as public pathway and can be recorded in the revenue records. Only for the said purpose, the representations have been given. Therefore, a direction may be given to the respondents to consider the same and after enquiry to pass orders on merits.

5. However, Ms.Akila Rajendran, learned counsel for the Government appearing for the respondents has relied upon the following averments made in the counter affidavit:

"4. With regard to para 2 of the affidavit, it is submitted that Mr.L.Vivekanandan, the petitioner father Mr.Loganathan herein is owned lands in Survey No.7/2F of Abinavam Village, Attur Taluk, Salem District. Adjacent to the said land one Pathway is being used by the public and the said Pathway is located in Patta land in Survey Nos.5,6,17&18 owned by Tvl.Kandasamy Naicker, Subramaniya Naicker and Manicka Padyatchi.

5. With regard to para 3 of the affidavit, it is submitted that the



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contentions of the petitioner are not correct. In fact, the Cart track pathway in Agricultural lands in S.Nos.5,6,17&18 are not specified as "12 Feet Cart Track pathway". The revenue records shows that the said lands in which the Cart track pathway is used are patta lands of the above said Tvl.Kandasamy Naicker, Subramaniya Naicker and Manicka Padyatchi. The petitioner was instructed by the said land owners not to use the cart track pathway since the said lands are Patta lands."

6. By relying upon the aforesaid averments, the learned counsel for the Government would submit that, since the land in question, i.e., S.Nos.5,6,17&18 are agricultural lands, which are Patta lands belong to the three individuals referred above. Therefore, the same can never be treated either as a pathway or cart track and therefore, if at all the petitioner or others have been permitted to use the same, as claimed by the petitioner, that would not confer any right on them and based on which, the revenue authorities cannot make the said land in question as a public pathway or cart track, as the revenue authorities can go with the title produced by the parties concerned. In this context, the three individuals since are having the Patta lands and at no point of time, it has ever been stated that the said land has been used as pathway or cart track, that kind of plea made by the petitioner through the representations cannot be considered. Therefore, the said Writ Petition is liable to be rejected, she contended.

7. I have considered the said submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

8. As has been rightly pointed out by the learned counsel for the Government appearing for the respondents by relying upon the averments made in the counter affidavit as stated supra, the land in question is a Patta land belongs to the three individuals. When that being so, it cannot be asked for as a matter of right by the petitioner or any other third party to make use of the said land as a pathway or cart track.

9. If at all the case of the petitioner is that, he used it as a pathway or cart track for more than two decades, that kind of easementary right if anything, can be established by the petitioner, for which, the remedy lies for the petitioner not before this Court or before the revenue authorities and he can very well approach the Competent Civil Court by filing a Suit



for easementary right, without which, he cannot establish his alleged rights for pathway or cart track, which belongs to the three individuals referred to above.

10. Moreover, in this Writ Petition, none of the three individuals who are owners of the land in question, have been arrayed as a party respondents.

11. Be that as it may, for the aforesaid reasons, this Court feels that, in view of the definite stand taken by the revenue authorities which has been reflected in the counter of the Tahsildar in para 4 and 5 as stated above, the plea now raised by the petitioner through the representations dated 23.09.2013 and 01.02.2012 cannot be directed to be considered on merits.

12. In that view of the matter, this Court feels that, this Writ Petition is liable to be rejected. Accordingly, this Writ Petition is dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vji
To

1. The District Revenue Officer,
Salem District.
2. The Revenue Divisional Officer,
Attur, Salem District.
3. The Tahsildar,
Attur, Salem District.

+1cc to the Government Pleader Sr.30272

W.P. No. 19411 of 2014

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