



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.01.2021

CORAM

THE HONOURABLE MR.JUSTICE **V.PARTHIBAN**

W.P.(MD)No.1103 of 2021

and

W.M.P.(MD)Nos.957 and 959 of 2021

Periyasamy

: Petitioner

Vs.

1.The District Collector,
Sivagangai District.

2.The District Revenue Officer,
Office of the District Revenue Officer,
Sivagangai District.

3.The Revenue Divisional Officer,
Office of the Revenue Divisional Officer,
Sivagangai District.

4.The Tahsildar,
Manamadurai Taluk,
Sivagangai District.

5.Sonai

6.Alagu

7.Sankar Ganesan

8.Ayodhiraman

9.Alagu

10.Pitchai

11.Anand Jothi

12.Karthikeyan

: Respondents

PRAYER :- Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorari, to call for the records of the 2nd respondent pertaining to the proceedings in Na.Ka.Aa2/8468/2019 dated 23.12.2020 and quash the same as illegal and arbitrary and consequently to direct the 2nd respondent to direct the respondents 11 and 12 to approach the competent Civil Court for the relief sought for by the respondents 11 and 12 regarding the pathway access to S.No. 244/22 in S.No.244/20 in Patta No.319, Rajakambeeram Village, Rajakambeeram Group, Manamadurai Taluk, Sivagangai District.



For Petitioner : Mr.R.Senthil Kumar
For R1 to R4 : Mr.R.Murugan
Additional Government Pleader

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ORDER

The case of the petitioner is that his father has purchased the property situated at New S.No.244/20, Old S.No.109/2 at Pillaiyarkovil Street, Rajakambeeram, Rajakambeeram Village and Post, Manamadurai Taluk, Sivagangai District. When the petitioner's father purchased the property, it was a vacant site and after the purchase, he put up two houses and had been enjoying the property with uninterrupted interference and possession. The patta, after purchase of the property, had been transferred to the petitioner's father's name vide Patta No.319. The electricity service connections have also been obtained in respect of the two house sites. A portion of the land on the northern side left as a vacant site, in which, a small borewell has been dug and the water being pumped out from the Well.

2.The respondents 5 to 10 herein have their houses adjacent to the petitioner's property. However, they have no access to their house plots and the 5th respondent particularly approached the petitioner's father in 2004 and requested that he was willing to purchase a portion of the land on the northern side of the land for having a pathway and access to his property. In response to the request of the 5th respondent, the petitioner's father sold a small portion of the land to the 5th respondent to an extent of 90 sq.ft., and registered the same as document No.5000/2004, dated 05.01.2004.

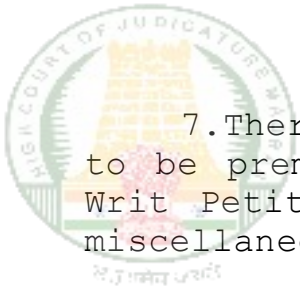
3.The respondents 6 to 12 have their dwelling houses adjacent to the 5th respondent house and all of them are related to each other. According to the petitioner, the respondents 5 to 12 belong to dominant community, but, he belongs to another community and therefore, there were certain disputes regarding the claim to the entire vacant site on the northern side of the petitioner's property. The respondents 5 to 12 have started making illegal claim of the entire portion of the vacant site on the northern side and in order to resolve the issue and controversy, the petitioner filed a suit for declaration and permanent injunction in O.S.No.46 of 2020 before the Principal District Munsif Court, Manamadurai. The petitioner in the suit has filed a petition to appoint an Advocate Commissioner in I.A.No.2 of 2020 and an Advocate Commissioner was also appointed. The Advocate Commissioner has also visited the petitioner's house on 27.12.2020 after serving notice to the respondents herein, who are defendants



4.While the matter stood thus, the respondents 11 and 12 have approached the second respondent to sub divide the vacant site to an extent of 619 sq.ft in S.No.244/20 in regard to the property belonging to the petitioner. The said respondents colluding with the respondents 5 to 10 have approached the second respondent to declare the entire vacant site of the petitioner's property as a pathway to their houses. According to the petitioner, no notice was issued to the petitioner calling him for any enquiry. According to the petitioner, the respondents 11 and 12 are attempting to grab the property illegally in order to put up a pathway providing access to their houses. In the said circumstances, the petitioner is before this Court challenging the proceedings of the second respondent, dated 23.12.2020 for conducting the enquiry to the claims of the private respondent as against the interest of the petitioner.

5.Factually, it can be seen that it is only an inter-official correspondence between the Revenue Divisional Officer and the Tahsildar concerned and the contents of the proceedings, which is impugned in this Writ Petition, would show that there was going to be an enquiry in regard to the claim of the private respondents in relation to the property in question. The copy of the proceedings was not marked to the Writ Petitioner and this Court is unable to see as to how the proceedings, which copy is not marked to the petitioner, can be the subject matter of the challenge. In any event, the authorities have merely proposed to conduct an enquiry in the matter and since the petitioner herein has become aware of the proceedings, it is always open to him to approach the authorities concerned and impress upon him as to the facts of the pending civil suit filed by him as against the private respondents on the subject matter. It is possible that the authorities may accept his case and close the enquiry recording pending the civil suit between the parties. However, without any decision being taken in the matter, it is not open to the petitioner to seek any direction from this Court by invoking the extraordinary jurisdiction under Article 226 of Constitution of India in the guise of challenging the so called proceedings of the second respondent.

6.In any case, if the petitioner is having any apprehension that his right would be undermined before any decision of the civil suit, it is still possible for the petitioner to obtain any interim protection of his right from the Civil Court in the pending suit. However, bypassing the available civil remedy and approaching this Court is uncalled for at this stage in the circumstances of the case.



7. Therefore, this Court finds that the Writ Petition appears to be premature and not maintainable at this stage. Hence, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AE)

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/ /2021

Sub Assistant Registrar(CS)

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To

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+1 CC to M/s.GP (SR-2395[F] dated 29/01/2021)

+1 CC to M/s.SENTHIL KUMAR, Advocate (SR-2508[F] dated 29/01/2021)

W.P. (MD) No. 1103 of 2021

25.01.2021

es (CO)

TR(11.02.2021) 4P 7C