



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 03.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P. (MD)No.1658 of 2021
and
W.M.P. (MD)No.1398 of 2021

P.Asokan

... Petitioner

- Vs -

1. The Assistant Commissioner,
Zone 3, Corporation of Madurai,
Madurai.

2. The Tahsildar,
Madurai South Taluk,
Madurai.

3. S.Dhanapal

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus forbearing the Respondent Nos.1 and 2 from in any way converting the private pathway (Poosthithi Pathai) in T.S.No.90, Madurai South Taluk, Madurai into a public pathway.

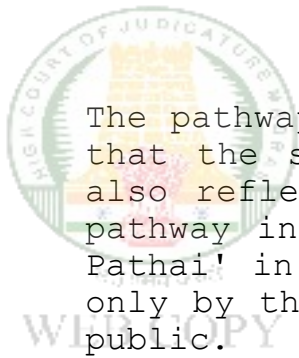
For Petitioner : Mr.Y.Prakash
For Respondents : Mr.M.Jeyakumar
1 and 2 Additional Government Pleader

ORDER

The brief case of the petitioner is that he and his brothers are the absolute owners of the land and buildings situated at Chairman Muthuramiam Road comprised in Old T.S.No.2570, New Survey No.125 having purchased the property by way of sale deed dated 11.09.1972 registered as Document No.4424/1972 on the file of the Sub Registrar Office, Madurai. Ever since the purchase of the property, the petitioner and his brothers are in physical possession and enjoyment of the same without any interruption.

2.According to the petitioner, there is a pathway leading to the subject property which is about 250 feet long and 15 feet wide.

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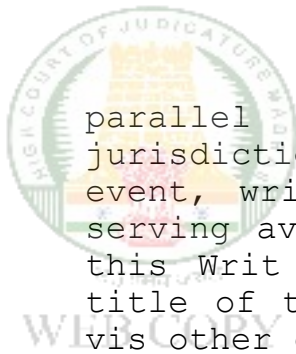
The pathway is located in T.S.No.90. The case of the petitioner is that the said pathway is also the subject matter of the sale and also reflected in the sale deed dated 11.09.1972. In effect, the pathway in Survey No.90 is a private pathway shown as 'Poosithithi Pathai' in revenue records and the pathway has been exclusively used only by the petitioner and his brothers and not open to the use by public.

3. According to the petitioner, there are several residential houses and buildings in the neighbouring survey numbers and access to those buildings is through separate pathway which is about 8½ feet wide in Survey No.81 lying on the north of the pathway in T.S.No.90. The pathway in T.S.No.81 and the private pathway in T.S.No.90 is not connected and both the pathway is separate. The pathway in T.S.No.81 alone has been used by the residents in the neighbouring areas in the adjacent survey numbers.

4. While so, the residents in the adjacent survey numbers have slowly started encroaching upon the pathway in T.S.No.90 and in order to prevent trespassing from the local residents, a fencing was put up by the petitioner and his brothers in the other survey numbers to protect their property from illegal usage.

5. According to the petitioner, the petitioner and his brothers have been recently facing continuous disturbance and interference from the residents of the neighbouring survey numbers which led to lodging of police complaint in November, 2020. The third respondent is one of the persons against whom the complaint was lodged. According to the petitioner, in Town Survey Register pertaining to T.S.No.90, the name of the pathway is still described as 'Poosithithi Pathai'. While the matter stood thus, the respondents 1 and 2 appear to have altered the revenue records describing the pathway in T.S.No.90 as Government poramboke on the basis of the illegal conversion of the pathway without any notice to the petitioner and his brothers. In this regard, the petitioner appears to have approached the Revenue Divisional Officer to seek patta in respect of T.S.No.90 as a private pathway and in that regard, a representation has also been sent on 10.12.2020 along with documents and the same has not been disposed of as on date. While the claim of the petitioner is pending before the competent authority, the petitioner has simultaneously moved this Writ Petition seeking issue of mandamus preventing the revenue authority from changing the description of the land.

6. This Court is unable to appreciate as to how the present Writ Petition is maintainable in view of a serious dispute of this nature involving settlement of factual claims as between the parties. In any case, the petitioner having chosen to go before the competent revenue authority questioning the action of the official respondents in seeking to convert the description of the property against his



parallel proceedings before this Court invoking extraordinary jurisdiction under Article 226 of the Constitution of India. In any event, writ of mandamus cannot be issued only based on the self-serving averments of the petitioner and any direction as sought in this Writ Petition if issued, it would amount to determining the title of the petitioner to the pathway located in T.S.No.90 vis-a-vis other claims.

7. In view of the above detailed factual narrative, it could be seen that the issue cannot be resolved by this Court in exercise of its writ jurisdiction and though the learned Counsel attempted to argue that it is mere a dispute of conversion of description without any notice to the petitioner, this Court does not find that the submission of the petitioner counsel has to be taken as valid piece of argument and the case to be decided on such simple premise. This Court is of the considered view that the learned Counsel for the petitioner, in order to maintain this petition, has attempted to oversimplify the issue but in actuality, the dispute of this nature has to be resolved elsewhere and not before this Court.

8. Therefore, the Writ Petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar

To

1. The Assistant Commissioner,
Zone 3, Corporation of Madurai,
Madurai.
2. The Tahsildar,
Madurai South Taluk,
Madurai.

+1 CC to THE SPECIAL GOVERNMENT PLEADER(SR-3295[F] dated 04/02/2021)

Order made in
WP(MD)No.1658 of 2021 and
WMP(MD)No.1398 of 2021
03.02.2021

SRM

SRS/01.03.2021/3P/4C

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