



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2022

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.4073 of 2009
and
W.M.P.No.1 of 2009

Kuppusamy

... Petitioner

Vs.

- 1.The District Collector,
Tiruvannamalai.
- 2.The Tahsildar,
Tiruvannamalai Taluk & District.
- 3.The Inspector of Police,
Tiruvannamalai East Police Station,
Tiruvannamalai.
- 4.The President,
Keezhnathur Village Panchayat,
Tiruvannamalai.
- 5.The Village Administrative Officer,
Keezhnathur Village,
Tiruvannamalai.

6.Chakkarai @ Chakravarthy

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents to forthwith restore the petitioner's property measuring an extent of 8 cents comprised in S.No.128/7, New S.No.170/3, Keezhnathur Village, Tiruvannamalai Taluk & District to its original state.

For Petitioner : Mr.Sarvabhauman

For R1 to R3 : Mr.V.Veluchamy
Additional Government Pleader

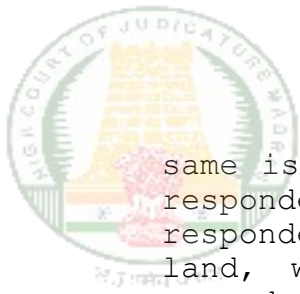


O R D E R

This Writ Petition has been filed seeking for issuance of a Writ of Mandamus, directing the respondents to forthwith restore the petitioner's property measuring an extent of 8 cents comprised in S.No.128/7, New S.No.170/3, Keezhnathur Village, Tiruvannamalai Taluk & District to its original state.

2. The case of the petitioner is that the petitioner is the owner of the aforesaid property. He submitted that an extent of 32 cents of punja land comprised in S.No.128/7 presently S.No.170/3, is the ancestral property of C.Munusamy and others. The aforesaid land owners sold their properties to various persons including the petitioner's father. Whereas, the petitioner father had purchased an extent of 8 cents under two sale deeds dated 03.04.1985 and 10.08.1988, and the petitioner's father is in possession of the property along with his sons. Apart from the petitioner's father, one Chinnathambi and Renu had purchased 4 cents each out of the extent of 32 cents, one Thangavel had purchased an extent of 2.1/2 cents and one Arumugam had purchased 3 cents in the extreme southern end of the extent of 32 cents. The remaining lands continued to remain with the original owners. However, the total extent of 32 cents was bounded on the north by Pillaiyar Koil Street and on the south by Mariamman Koil Street. Since the lands purchased by the petitioner's father, Thangavel and Renu were locked, the petitioner and others made a private arrangement amongst themselves in and by which they left an extent of about 3.1/2 ft. at the extreme eastern end of the extent of 32 cents as a pathway for each one of them to reach their respective properties.

2.1 The above said pathway was not used by the public since it was only a private pathway. While so, the 6th respondent, who has his property to the east of the lands started making a claim to use the pathway, although he had another alternative pathway and the said action was objected by the petitioner. Further, the petitioner lodged a complaint with the 3rd respondent herein. However, the 3rd respondent has not taken any action against the 6th respondent. Therefore, the petitioner's father filed a Suit in O.S.No.422 of 2007 on the file of District Munsif Court at Tiruvannamalai against the 6th respondent for declaration over the suit property and a consequential injunction and the petitioner's father also filed I.A.No.448 of 2007 in the above suit, seeking to grant an ad interim injunction restraining the 6th respondent, agents and servants from in any manner interfering the peaceful possession and enjoyment of the petition mentioned property till the disposal of the suit and subsequently, the Learned District Munsif Court granted ad interim injunction on 17.09.2007 and the



same is being extended till date. In spite of that order, the 6th respondent herein with the active support of the 4th and 5th respondent came into the Suit property in order to survey the land, when the suit is pending. While so, on 07.01.2009 at around 9.00 p.m., the revenue officials including the police officials came to the petitioner's property and demolished a portion of petitioner's property overnight. Thereafter, the petitioner made several representations to the Collector and the Chief Minister's office to take action against the Public Authorities. However, no further action was taken. Hence, the present Writ Petition is filed.

3. The learned counsel for the petitioner submitted that despite the order of the Civil Court, the revenue officials and police officials demolished the petitioner's property is not sustainable. Further, he submits that this Court may issue direction to the respondents to restore the petitioner's property as it was in original state within a reasonable time that may be fixed by this Court.

4. Heard the learned counsel for the petitioner as well as the respondents and perused the materials available on record.

5. Though the Writ Petition is pending, however, till date, no counter affidavit is filed. Further, the petitioner claims that he is the owner of the property and there was a pathway dispute between the petitioner and the 6th respondent and the petitioner also claims that he has filed a Suit in O.S.No.422 of 2007, the ad interim injunction was granted against the official and private respondents.

6. In view of the above, the remedy is available to the petitioner to approach before the trial Court or to file a fresh Suit for claiming compensation for the demolished portion against the official respondents. Instead of availing the said remedy, filing the present Writ Petition is not maintainable. The disputed question of fact cannot be decided under Article 226 of the Constitution of India and the relief sought for in this Writ Petition cannot be granted. However, liberty is granted to the petitioner to work out the remedy in the manner known to law.

7. Accordingly, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar



jd/nhs

To

1.The District Collector,
Tiruvannamalai.

2.The Tahsildar,
Tiruvannamalai Taluk & District.

3.The Inspector of Police,
Tiruvannamalai East Police Station,
Tiruvannamalai.

4.The President,
Keezhnathur Village Panchayat,
Tiruvannamalai.

5.The Village Administrative Officer,
Keezhnathur Village,
Tiruvannamalai.

+1cc to M/s.Sarvabhuman Associates, S.R.No.18255

+1cc to the Special Government Pleader, S.R.No.18549

W.P.No.4073 of 2009

SKM(CO)
SB(14/06/2022)