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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2022

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.NO.5003 OF 2019

&

WMP.NOS.5719 & 5724 OF 2019

M.Paramasivam

... Petitioner

Vs

1. The District Collector,
Salem District, Salem.
2. The Revenue Divisional Officer,
Attur, Salem District.
3. The Tahsildar,
Gangavalli Taluk,
Salem District.
4. The Executive Engineer,
Major Project Division,
Tamil Nadu Water Supply and
Drainage Board,
Suramangalam, Salem - 5,
Salem District.
5. The Assistant Executive Engineer,
Tamil Nadu Water Supply and
Drainage Board,
Attur, Salem District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relevant to the order O.Mu.1110/2017/A4 dated 13.06.2017 passed by the 3rd respondent which was confirmed in Na.Ka.No.6813/2017/A2 dated 05.02.2018 passed by the 2nd respondent which was confirmed by the 1st respondent in Na.Ka.No.8230/2018/K2 dated 12.01.2019 and quash



the same as illegal, improper, unreasonable, arbitrary and against the principles of natural justice and thereby direct the respondents not to disturb the petitioner's peaceful possession and enjoyment of the property situated in Survey No.200/1A, Gramanatham, Vellaiyur Village and Post, Gangavalli Taluk, Salem District - 636 169 consisting of 5 cents.

For Petitioner : Mr.B.Sundarapandiyan

For Respondents : Mr.C.Jayaprakash,
Government Advocate

O R D E R

The petitioner seeks a Writ of Certiorarified Mandamus to quash an order dated 12.01.2019 passed by the District Collector, confirming orders dated 05.02.2018 and 13.06.2017 passed by the second and third Respondents, the Revenue Divisional Officer and the Tahsildar.

2.The petitioner claims peaceful possession and enjoyment of the property in Survey No.200/1A, Gramanatham, Vellaiyur Village and Post, Gangavalli Taluk, Salem District - 636 169 comprising five cents.

3.Though the Writ Petition contains various averments and allegations in regard to the eviction of the petitioner from the aforesaid property, this Court had vide order dated 23.03.2022, after hearing the parties, stated as follows:

"....

2.The petitioner contends that he is in occupation of Survey No.200/1A, which is re-numbered as Survey No.372/1. As per paragraph-3 of the counter filed in this Writ Petition, the aforesaid land has been classified as Street.

3.However, at paragraph 10 of the counter, they refer to a counter filed by these very respondents in Contempt Petition No.2838 of 2013 dated on 22.07.2014 at the instance of this writ petitioner for non-compliance of order dated 06.01.2017 in W.P.No.3409 of 2013, wherein at paragraph-4 they state as follows:

'.....

4.We do not find any merit in this conempt petition. In this counter affidavit filed by the 2nd respondent, it has been stated that as there was no encroachment in Survey



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No.200/1A no action has been taken against the petitioner. The petitioner is owing the patta lands in survey No.200/5. It is further stated that if any encroachment is found to be made by the petitioner then action should be taken only in accordance with law.'

4.The statements at paragraphs 3 and 10 are contradictory. Thus, there is a direction to R-3 to inspect the aforesaid lands forthwith and file a report clarifying which property the petitioner is in occupation and classification of the same. The contradictory statements in counter at paragraphs 3 and 10 as aforesaid will also be reconciled in the report."

4.Thereafter, a report has come to be filed by the Tahsildar reading as follows:

"I, J.Sumathi, W/o.Chandrasekaran aged about 42 years residing at Taluk Office, Thalaivasal working as Tahsildar, Thalaivasal, Salem District temporarily come down to Chennai. I do hereby solemnly affirm and sincerely state as follows:

1) It is submitted that I am the 3 Respondent herein, and working as Tahsildar, Thalaivasal, Salem District as such, I am well acquainted with the facts and circumstances of the case from the available records. I have perused the affidavit filed by the petitioner in support of documents. I had filed the counter affidavit on behalf of 1st and 2nd respondents also. The W.P 5003/2019 and W.M.P. 5724/2019 was lastly heard on 23.03.2022 and made the following orders.

"The statement at paragraphs 3 and 10 are contradictory. Thus there is a direction to R-3 to inspect the aforesaid lands forthwith and file a report clarifying which property the petitioner is in occupation and classification of the same. The contradictory statements counter at paragraphs 3 and 10 as aforesaid will in also be reconciled in the report".

2) This only requires the officer to report by clarifying which property the petitioner is in occupation, of whether the property is in occupation, of whether the property at S.No.200/1A renumbered as S.No.372/1 or 200/5 as well as what the classification of the aforesaid properties are.



3) A cost of Rs.5000/- is imposed upon the respondents payable to Cancer Institute, Adayar, Chennai - 600020. proof to be filed by the next date of hearing.

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It is submitted that as per the direction of the Honorable High Court order in W.P. 5003/2019 and W.M.P. 5724/2019, the direction para 4 in order dated 22.02.2022 in para 3 and 10 are contraindicatory. I submit that, I had perused the A-Register Before updating Registry and after updating registry the S.No.200/1A (renumbered as S.No.372/1) as follows:

A- Register Classified as Grama Natham and further above survey number subdivided as Street. It is correctly noted in the affidavit filed by the Tahsildar, Gangavalli.

In respect of Para 10, in pursuant to the order passed by this Honorable High Court in MP No.1/2013 and MP No. 1/2014 in W.P. No.34309/2013 dated: 06.01.2017, as follows:

- 'i) The Petitioner shall approach the third respondent Tahsildar, Gangavalli Taluk and submit his representation, within two weeks from the date of receipt of a copy of this order.
- ii) The Third respondent, Tahsildar is directed to issue notice to the petitioner as well as the respondents 1 and 2 within a period of two weeks from the date of receipt of copy of the petitioner's representation for providing opportunity.
- iii) Thereafter, the petitioner shall make his objections and produce necessary documents before the third respondent within a period of four weeks.
- iv) The respondents 1 and 2 shall also submit their reply for the objections of the petitioner.
- v) Thereafter, the third respondent Tahsildar is directed to pass final orders within a period of six weeks time. Till such time, the status quo as on today, shall be maintained by the parties.'

As per the order of Honorable High Court the 3 respondent, i.e then Tahsildar, Gangavalli had



conducted enquiry to the petitioner and the Assistant Executive Engineer on 14.04.2017 and passed order in his O.Mu. 1110/2017/A4 dated 13.06.2017 as follows.

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'After the deposition from the Assistant Executive Engineer and the land in S.No.372/1 measuring extent 0.2600.0 Sq.ft is classified as street in Natham and vested with Vellaiyur Panchayats.'

On the above order issued by the Tahsildar, Gangavalli, Petitioner appealed to Revenue Divisional Office, Attur and against this and on further enquiry RDO, Attur confirmed the order of Tahsildar, Gangavalli by Roc.No.6813/2017/A2 dated:26.11.2018. Adding to above, the Petitioner again appeal to District Collector, Salem and on further enquiry Collector, Salem issued proceedings to confirm the order of Tahsildar, Gangavalli on Roc.No.8230/2018/K2 dated: 12.01.2019.

From this village records, A-Register, NathamAdangal as stated in the Counter affidavit in para 3 and 10 are correct.

I submit the deposition of the Assistant Executive Engineer, TWAD Board, Village A- Register before and after UDR, NathamAdangal and on inspection of village records S.No.200/1A (renumbered as S.No.372/1) classified as "Street" is correct and I submit the above before the Honorable Court for consideration.

Hence, I prayed that this Hon'ble Court may be pleased to accept the points put forth before the Hon'ble Court and pass the order passed in W.P.5003/2019 and W.M.P.5724/2019."

5.The report makes it clear that earlier order dated 21.03.2014 passed by this Court in W.P.No.7045 of 2013 wherein the petitioner had sought mandamus forbearing the respondents from forcibly evicting the petitioner from the property in question, has been complied with.

6. Prior to the filing of the present Writ Petition, the petitioner has also filed W.P.No.34909 of 2013 seeking Mandamus forbearing the respondents from erecting water pipelines or digging the land in the petitioner's property situated in Survey No.200/1A, Gramanatham, Vellaiyur Village and Post, Gangavalli



Taluk, Salem District - 636 169 comprising five cents except by following the due process of law.

7. That Writ Petition came to be disposed on 06.01.2017 permitting the petitioner to make a representation to the Tahsildar, directing the respondents to hear him and thereafter to pass final orders. It appears that after due notice, the encroachments in the property in question had been cleared.

8. In light of the categorical statement in counter to the effect that the property in question, though initially classified as 'Gramanatham' has now been classified as 'Street' being used for public purpose, there is no merit in the claim of the petitioner. This Writ Petition is thus dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

sl/kbs

To

1. The District Collector,
Salem District, Salem.
2. The Revenue Divisional Officer,
Attur, Salem District.
3. The Tahsildar,
Gangavalli Taluk,
Salem District.
4. The Executive Engineer,
Major Project Division,
Tamil Nadu Water Supply and
Drainage Board,
Suramangalam, Salem - 5,
Salem District.
5. The Assistant Executive Engineer,
Tamil Nadu Water Supply and
Drainage Board,
Attur, Salem District.

+1cc to Mr.B.Sundarapandian, Advocate, S.R.No.23147

+1cc to the Government Pleader, S.R.No.23635

W.P.No.5003 of 2019 &
WMP.Nos.5719 & 5724 of 2019

KK(CO)

RLP(26/04/2022)