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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11 .01.2022

CORAM:

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.11699 of 2021

and

W.M.P.Nos.12456 and 12457 of 2021

Mr.R.Udayakumar (deceased)

2. Tmt.Vijaya

3. Tmt.Sangeertha

4. Mr.Kamesh

(P2 to P4 substituted as LRs of deceased

sole petitioner vide order dt. 06.07.2021

made in WMP.No.14459/2021 in W.P.No.11699/2021 ... Petitioners

Vs.

1. The Tahsildar,
Anaimalai Taluk,
Coimbatore District.

2. Mr.S.Ramesh ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of a Writ of Certiorari to call for the impugned order passed by the 1st respondent in his proceeding Na.Ka.No.302/2021/A2 dated 16.04.2021 and quash the same.

For Petitioners : Mr.K.Raja

For Respondents : Mr.V.Veluchamy for R1
Government Advocate
Mr.ARL.Sundaresan, Senior Counsel
for Mr.K.Myilsamy for R2

ORDER

This writ petition has been filed for a Certiorari to quash the impugned order passed by the first respondent in his proceedings in Na.Ka.No.302/2021/A2 dated 16.04.2021.



2.The case of the petitioners is that they being the absolute owner of the agricultural land measuring an extent of 3 acres 18 cents in S.No.674 and an extent of 2 acres and 8 cents in S.No.673/B situated in Anaimalai South Village, Anaimalai Taluk, Coimbatore District, the said land was purchased by their father vide Sale Deed dated 11.04.1995 registered as Document No.348/1955 before the SRO Anaimalai and their family is in possession of the property by cultivating the same until the death of their father.

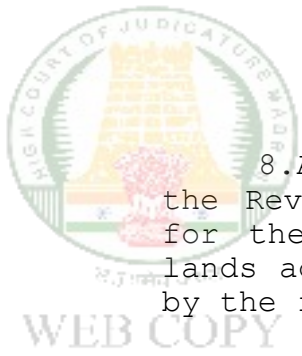
3.The petitioners submit that the lands in S.Nos.669, 672, 673, 682, 684, 685, 686 and 687 were purchased by the second respondent vide Sale Deed No.1535/2004 and after purchasing the same, in the year 2004 knowing fully well about the existence of physical features of the land and till date they are cultivating the same utilizing the other existing/available way from time immemorial.

4.The petitioners further submit that in order to grab their property, the second respondent has lodged a complaint with the first respondent on 18.02.2021 alleging that there is a public pathway in the second respondent's land and that it should not be closed down, for which he has given a reply on 09.02.2021 and the same was negatived and held that it is a public pathway vide impugned order dated 16.04.2021.

5.According to the petitioners, the said pathway is not a public pathway and no public is using the said land for any purpose and the first respondent is not having any jurisdiction to interfere on the grounds of want of jurisdiction and that the impugned order passed by the first respondent based on RSO 26 (15) is highly illegal and arbitrary owing to the reasons that the said Revenue Standing Officer is not applicable in the present case as it is a private land and the dispute is only between two individuals and not with public.

6.The petitioners submit that the property was purchased by the second respondent in the year 2004 knowing about the existence of the physical features of the land and the way to reach his agricultural field through the way which is in existence from time immemorial.

7.The petitioners further submit that the Revenue Records did not mention anywhere that Nilaviyal Pathai or cart track have been in existence and the same is being used by the public and as a matter of fact RSO 26(15) is applicable when the Revenue Records says that pathways and cart track have been used by the public till date.



8. According to the petitioners, the Encroachment Act and the Revenue Standing Order is applicable only when the pathway for the public is affected and not between two owners having lands adjoining to each other thus the impugned order was passed by the first respondent without jurisdiction.

9. The petitioners submit that the Order made in W.P.No.3900 of 2017 is not applicable as stated by the Authorities concerned and it is only a dispute between the two individuals and no public right is infringed and the impugned order has to be set aside on the ground that there is no cause and action for passing such order.

10. In support of their contentions, the petitioners have relied upon a judgment of the Hon'ble Supreme Court in the case of Harbanslal Sahnia & Another vs. Indian Oil Corporation Ltd. & Others reported in CDJ 2003 SC 125, has held as follows:

"...7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies; (i) where the writ petition seeks enforcement of any of the Fundamental Rights; (ii) where there is failure of principles of natural justice or, (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act and is challenged. [See Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and others (1998) 8 SCC 1]. The present case attracts applicability of first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings."

11. The petitioners have no other alternative remedy except to approach this Court under Article 226 of the Constitution of India. Hence, the writ petition filed.

12. The learned Government Advocate for the first respondent



has filed a counter. The relevant paragraphs of the counter is extracted hereunder:

5.It is submitted that after careful examination and on direct visit of the disputed lands of the said petitioner the said pathway is in the land of Mr.Udayakumar and the said pathway is described as a common pathway in the sale deed pertaining to the petitioner as well as the 2nd respondent. The 2nd respondent, in order to reach his land for paddy cultivation in SF No.668B, 669/1, 672/B has been using the said pathway for nearly two decades and presently the said Udayakumar damaged the said pathway, further it is imperation to state that, pathway in the entire village belongs to different individuals by way of a sale deed, however all such pathways are commonly used by all the persons for more than 50 years. Even if one pathway is damaged, cultivation in one portion of the village will be affected. Even though the said pathway is not mentioned in the A Register. All the pathway are used by the general public for more than 50 years as such, any damage to the pathway will lead to a law-and-order issue in the village, and this respondent being the Tahsildar cum Executive Magistrate is duty bound to resolve the issue.

6.It is submitted that on conclusion of the proceeding an order was issued after consideration of the fact that the petitioner Mr.Udaykumar and the respondent Mr.Ramesh are having their nanjai land pathway and the schedule of property in the sale deed mention that the said pathway is common, as such, the same has been restored to the earlier stage. Further the impugned order in itself stating that an appropriate remedy is obtained from the civil court regarding the right of the pathway, this order will continue and if any person is aggrieved by the said order, an appeal before the sub-collector can be filed within 30 days of the receipt of the order.

7.It is submitted that aggrieved with my order 16.04.2021 the petitioner has approached this Hon'ble court instead of filing an appeal as per the Tamil Nadu Patta Passbook Act, 1983:

"12.Appeal. - Any person aggrieved by an order made by the Tahsildar under this Act may, within such period as may be prescribed, appeal to such authority as may be prescribed and the decision of such authority on such appeal shall, subject to the



Coimbatore District, Deputy Superintendent of Police, Anaimalai Taluk and also Inspector of Police, Anaimalai Police Station.

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6.The District Collector who went through the petition stated that he will direct the Tahsildar to conduct an enquiry to ascertain the situation on ground and advised me to file a petition before the Tahsildar also. Accordingly, I filed the petition before the Tahsildar of Anaimalai on 18.1.2021 complaining about the conduct of the petitioner. The Tahsildar who is also the Executive First Class Magistrate and in whose jurisdiction this property is situated is entitled to entertain the complaint. It is not my case that the pathway is a public pathway. In order to ascertain the ground reality the learned Tahsildar summoned the Village Administrative Officer and ascertained the facts through enquiry. He gathered sufficient evidence and came to the conclusion that my case regarding the recent damage caused to the portion BD was true and directed the petitioner herein to restore the status quo ante with a further observation that the dispute should be resolved through civil court.

7.In his order dated 16.4.2021, the learned Tahsildar has recorded a finding on facts that this pathway is the only access to reach my property on the west and that there is no other pathway and that the portion BD, as per his enquiry, was damaged and that the status ante must be restored. After the passing of the order the portion BD was duly restored on 19.04.2021. It is relevant to mention that the factual findings of the learned Tahsildar are not disputed. The only ground on which the order of the Tahsildar is sought to be assailed is that he has no jurisdiction. The petitioner has not denied the fact that he is having access to his lands through my lands. He has not stated that I have any other access to reach my lands other than the pathway portion marked as BD.

8.The petitioner has falsely stated that "I have not stated there is no other way". If I had any other way I would not have filed the petition before the District Collector and the Tahsildar. The petitioner also has not referred to any other pathway. The Tahsildar in his order has only discussed the position, as to under what circumstances the provisions of the Land Encroachment Act will be attracted. He has also noted that his pathway is not



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a plan marked feature. He has recorded a finding that his enquiry revealed that the petitioner and myself have been using the pathway in question. The learned counsel for the petitioner during his submission also stated that the disputed pathway was enjoyed by me and the petitioner. The Tahsildar also recorded a finding that the recital in my sale deed with regard to mamoolvazhithadam only refers to the disputed pathway. He has also noted the fact that in some portions of my land paddy has been harvested and in the remaining portion coconut has been cultivated. He has also recorded his finding that the pathway exists from Periannai Vaikkal Road and that I continuously used the same to enjoy my lands.

14. Heard learned counsel for the petitioners and the learned Government Advocate for the first respondent and the learned Senior Counsel for the second respondent and perused the materials available on record.

15. On going through the map, it is seen that part of the petitioners land is being used by the second respondent. Hence, if they have an easement right or any right by way of usage or by any right granted any kind of Sale Deed or any other documents, if any objection is there, the right has to be decided only by the competent civil Court.

16. On perusal of the photographs, it is seen that pathway is running between the land. That being the case, one person is blocking the same without obtaining appropriate orders from the competent civil Court, the first respondent has no right to decide the said title. However, it is not a public pathway even though it is only between the two individuals and it is being used by both the parties. But, when there is a Law and Order situation arises, the said Authority only directed to maintain status quo ante and to approach the civil Court to redress their grievance. Hence, this Court do not find any infirmity in the order passed by the first respondent.

17. In view of the facts and circumstances of the case and considering the submission made by either side, this Court is of the view that the order passed by the first respondent to maintain status quo ante is valid and upheld and it is left open to the parties concerned to approach the competent civil Court to redress their grievance.



18. With the above observations and direction, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar
pam/skr

To

The Tahsildar,
Anaimalai Taluk,
Coimbatore District.

+1cc to Mr.K.Raja, Advocate, S.R.No.21367

[26/04/2022]

W.P.No.11699 of 2021

SS (CO)
SU (28/01/2022)