



W.P. No.30696/2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
11.11.2022	18.11.2022

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

**W.P. NO.30696 OF 2016
AND
W.M.P. NO.32590 OF 2017**

A.Mohandoss

.. Petitioner

- Vs -

Collectorate, Sathuvachari
Vellore 632 009.

1. District Revenue
Officer

Vellore.

2. Revenue Divisional
Officer

Rep. by its President
Katpadi, Vellore District.

3. Dharapadavedu
Panchayat

Katpadi Taluk, Katpadi.

4. Tahsildar



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5. M.Sivalingam
6. Gopalakrishnan
7. K.Balaji

Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling for the records of the 1st respondent connected with his proceedings in Pa.Mu. D3/12303/2014 dated 5.7.2016 and quash the same.

For Petitioner : Mr. V.Raghavachari

For Respondents : Mr. T.K.Saravanan, GA for RR-1, 2 & 4
Mr. P.Gurunathan, AGP for R-3
Mr. S.Saravanakumar for RR-5 to 7

ORDER

The present petition assails the impugned order passed by the 1st respondent in and by which the disputed land was erroneously held to be a public road inspite of the fact that the patta granted in favour of the petitioner in respect of the said land was directed to be maintained in the name of the petitioner.



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2. It is the case of the petitioner that Devainai Ammal, the mother of the petitioner, had purchased two pieces of agricultural lands comprised in S. No.625/1 to an extent of 39 cents and 3 cents in S. No.625/2 situated in Dharapadavedu Village, Katpadi Taluk in the year 21.9.1981 and 15.4.1996 respectively. Thereafter, two pieces of vacant land on the eastern side of her land was sold to one Kuppan and Ganesan in the year 1981. It is the further case of the petitioner that though a 20 feet common pathway with entry from Mangalore-Cuddalore Trunk Road was left for the aforesaid purchasers to access their vacant sites, however, the said land was designated as pathway on the ground. The remainder of the lands were retained by the petitioner's mother and there was no intention to form a layout and no proposal was submitted to the panchayat to form a layout.

3. It is the further case of the petitioner that an unapproved layout called "Pattammal Layout" on the east of the petitioner's property was formed and the panchayat seems to have formed an imaginary public road right in the middle of the petitioner's land with right to the public to use the said road. It is the further



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case of the petitioner that the said portion of the property was never given to the panchayat for the purpose of formation of road and that no such road ever existed muchless any public road.

4. It is the further case of the petitioner that Ganesan, who purchased the plot from the petitioner's mother had sold the plot in favour of one Palani. Since the 3rd respondent interfered with the right of possession and enjoyment, the petitioner's mother filed suit in O.S. No.215/1998 before the District Munsif Court, Vellore for permanent injunction against the 3rd respondent herein and the two purchasers who had purchased the property from the mother of the petitioner from interfering with the possession and enjoyment of the land by the petitioner's mother. In the said suit, in the written statement, the panchayat had submitted that a public road was formed by forming a layout and that an application for approval of layout of plots was made by the petitioner's mother. After contest, the Court below granted a decree in favour of the petitioner's mother on the ground that there never existed a public road and that the petitioner's mother had no where formed layout or had sought approval for a layout and that the defendant had not proved the factum of formation of a



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public road and that all along, the property remained the property of the petitioner's mother and, accordingly an order of permanent injunction was granted in favour of the petitioner's mother.

5. It is the further case of the petitioner that based on the said decree, the petitioner had put up a compound wall around her property. It is the further case of the petitioner that the revenue authorities, at the instigation of the residents of the adjacent unapproved layout, had arbitrarily classified the land in survey No.625/1C as common pathway without any notice and hearing the petitioner and in stark violation of principles of natural justice. Therefore, the petitioner objected the act of the revenue authorities before the 2nd respondent by submitting representation and sought relief to transfer patta in his name, and after verification of the records and obtaining report from the Tahsildar, order was passed to make changes in the village accounts to carry the petitioner's name as the holder of patta and cancelled the patta in S. No.625/1C as pathway.

6. It is the further case of the petitioner that the 5th respondent had purchased a plot in the adjacent unapproved layout and no person including the



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5th respondent had any right of way over the lands of the petitioner comprised in S. No.625/1C, 625/2A and 625/2C covered by patta No.5094. It is the further case of the petitioner that the 5th respondent, who is unconnected with the plot of the petitioner, had filed an appeal dated 18.6.2014 before the 1st respondent against the order of the 2nd respondent dated 28.12.2004, to reclassify the land as pathway and to effect necessary changes in the revenue records in respect of the property of the petitioner. Curiously, no provision of law or the basis on which the appeal has been filed has been shown and the 1st respondent, without authority or jurisdiction to hear the said appeal, had taken up the same and without adverting to the fact that the said appeal has been filed after a delay of 10 years from the date when the 2nd respondent had directed mutation of revenue records, had erroneously passed the impugned order, unmindful of the decree passed by the court below in O.S. No.215/1998. Though the petitioner had filed necessary objection and after hearing the petitioner, the 1st respondent had passed the order without proper application of mind, which order is *non-est*, perverse and unsustainable and the 1st respondent lacks jurisdiction to entertain the alleged appeal. Aggrieved by the said order, the present writ petition has been filed for the relief supra.



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7. Learned counsel appearing for the petitioner submitted that when the suit has been decreed in favour of the petitioner's mother and a categorical finding has been recorded that the lands in possession of the petitioner's mother was not formed as a layout and there is no material to hold that approval was granted for the said layout, the order of the 1st respondent in holding that the lands have been given as a gift to the panchayat to be used as a public pathway and that all along it has been used as a public pathway is contrary to the materials available on record.

8. It is the further submission of the learned counsel that the 1st respondent cannot give any divergent finding to that of the finding which has been given in the suit filed by the petitioner's mother, which has been decreed in her favour and any finding in divergence to the decree passed by the civil court would be an act exceeding the jurisdiction of the authority and *non est* in law.

9. It is the further submission of the learned counsel for the petitioner that even the very recital in the sale deed by which two plots were sold in favour



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of third parties, the said recitals clearly reveal that the access granted by the petitioner's mother in respect of pathway is only for those persons, who had purchased the property and not for any person, who had purchased any property in the vicinity. It is the further submission of the learned counsel for the petitioner that when no layout has been formed by the petitioner's mother and only two plots were sold and the rest were retained by the petitioner's mother, in the absence of there being any layout, there was no necessity for the petitioner's mother to earmark any space as a public road and also to enter into any gift deed with the panchayat. It is the further submission of the learned counsel that no material has been placed before the court below to substantiate the fact that the petitioner's mother has, in fact, obtained any approval from the competent authority for making a layout and the mere allegation of the respondents that the petitioner's mother had obtained permission for layout and had sold the two plots from out is wholly imaginary and woven for the purpose of defeating the legitimate rights of the petitioner. Accordingly, he prays for allowing the present petition by setting aside the order passed by the 1st respondent.



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10. In spite of the fact that the writ petition is of the year 2016, however, no counter has been filed by the official respondents. However, the learned Government Advocate and the Special Government Pleader appearing for the respective official respondents submitted that the impugned order passed by the 1st respondent is based on the materials available on record and, therefore, no interference is warranted with the said order.

11. Learned counsel appearing for respondents 5 to 7, who are the purchasers of plot in the adjacent layout submitted that there is a categorical averment in the sale deed, which has been entered into by the petitioner's mother with the purchasers of the said plot that a space of 20 feet is earmarked for public road, which can be used by them. It is therefore the submission of the learned counsel that when a 20 feet public road has been earmarked in the land of the petitioner, then the said land is to be used by all the public as a public road and the petitioner cannot claim any exclusive right over the said land. Merely because no gift deed has been entered into with the panchayat by the petitioner's mother would not absolve the petitioner from surrendering the property with the panchayat for the public road as the said land is used for the



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purpose of laying pipelines and cables for water and electricity. Further, it is the submission of the learned counsel that electricity poles are also in the lands of the petitioner, which clearly shows that it is a layout, as otherwise the electricity poles would not have been placed on the private lands of the petitioner.

12. It is the further submission of the learned counsel that the 20 feet road public road is entered in the revenue records as 'Nilavial Theru' and merely at the instance of the petitioner, the 2nd respondent had passed the order to classify the said land in the name of the petitioner and make necessary entries in the revenue records, which has been duly considered by the 1st respondent and the said entry was ordered to be deleted.

13. It is the further submission of the learned counsel that the 5th respondent has not been made a party in the suit, though he is a neighbor of the petitioner, whose ingress and egress was prevented by the petitioner and though the 7th respondent's father was made a party, however, the said person was set *exparte*. It is the further submission of the learned counsel that the petitioner has suppressed material facts about the order passed by the Member



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Secretary in the application filed by the petitioner for construction of a shopping complex, as the said construction impedes the right of pathway of respondents 5 to 7 and other adjacent land owners and the writ petition filed in this regard, in W.P. No.21437/15 is pending consideration. Further, the lock and key, which was put up by the petitioner in the gate put up around the land of the petitioner was directed to be removed based on the order passed by this Court in W.P. No.15240/1998. All the aforesaid facts have not been placed before this Court which clearly shows that the petitioner has approached this Court with unclean hands.

14. It is the further submission of the learned counsel that the right of pathway to respondents 5 to 7 as well as other adjacent land owners stands established through the revenue records and the fact that the appeal was filed with a delay was on account of the fact that the alleged order dated 28.12.2004 passed by the 2nd respondent was not within the knowledge of the 5th respondent as he was not a party to the said proceedings and only on coming to know of the said order, the petitioner preferred representation before the 1st respondent on 18.6.2014. Therefore, it is the submission of the learned counsel that the said



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delay cannot be put against the 5th respondent to deny his right to the rightful use of the pathway. It is therefore the submission of the learned counsel that the 1st respondent having considered all the relevant materials and has passed the order, which does not warrant any interference.

15. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

16. The whole genesis of the case revolves around the fact that the petitioner's mother had formed a layout and from out of the said layout, the petitioner's mother had sold two plots while retaining the rest to be sold and in the said layout a 20 feet wide public road had been earmarked for use of the public and in that backdrop the said 20 feet road had been entered in the revenue records as 'Nilavial Theru'. However, on the petitioner's mother obtaining a decree in the suit in O.S. No.215/1998 for permanent injunction, the said entry in the revenue record was corrected and the petitioner's mother name was entered in the revenue record vide the order of the 2nd respondent dated



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28.12.2004, which was interfered with in the alleged appeal filed by the 5th respondent, which resulted in the passing of the impugned order.

17. In the above background of the facts, it is necessary for this Court to look into the sale deeds as also the judgment and decree of the court below in O.S. No.215 of 1998 to find out the exact character of the 20 feet wide land.

18. A careful perusal of the sale deed entered into between the purchaser and the petitioner's mother reveals that 20 feet has been earmarked for passage and rights to use the said path has been granted to the purchaser. From the above, it is clear that the 20 feet wide passage, which has been earmarked by the petitioner's mother in the land belonging to her of which two plots have been sold to certain third parties, right has been granted to the said purchasers to use the said path for their ingress and egress. Nowhere there is a whisper in the said sale deed that the said 20 feet wide passage is earmarked as a public road for the use of the public.



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19. Be that as it may. The suit in O.S. No.215/1998 has been filed by the petitioner's mother, as against the 3rd respondent herein and the purchasers of the land from the petitioner's mother. A perusal of the judgment and decree passed in the said suit reveals that it was the categorical stand of the petitioner's mother, who was the plaintiff therein that no layout has been formed in the lands owned by the plaintiff and that only a portion of the land owned by her has been sold to defendants 2 and 3 therein. However, it was the insistent contention of the 3rd respondent herein, who was the 1st defendant therein that a layout has been formed by the petitioner's mother and approval for the same had been obtained from the Town Planning Authority. It was the further stand of the 1st defendant that 20 feet wide road was earmarked for the use of the public as a public road and gift deed was to have been executed by the petitioner's mother, but she was evading execution of the gift deed. Further, it was the stand of the 1st defendant that on the basis of the plaintiff's application, pipes were laid through the lands of the petitioner for giving water connection to various houses in the street and lamp post was installed for the purpose of street lighting.



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20. On the aforesaid contentions, the court below, on a careful analysis of the documentary evidence filed by the plaintiff and defendant therein, came to the conclusion that the title to the suit property vests with the plaintiff, as proved through Ex.A-3 and that the parent deed of the plaintiff's vendor is Ex.A-2 and patta granted to the plaintiff was Ex.A-4. The trial court has further given a categorical finding that the property of the petitioner has been classified as house site and that Ex.A-5 is the approved plan, which has been issued to the plaintiff for the construction of a shopping complex. There is also a categorical finding that the approval for the shopping complex had been granted by the 1st defendant on 31.12.1996.

21. It has been further held by the court below that the 1st defendant has not produced any approved plan sanctioned to the plaintiff in which a public road is mentioned. The court below further held that only in the event of a layout being sanctioned, the 1st defendant was entitled to a gift deed for the area demarcated for the purpose of a public road and in the absence of any material to show about the approval granted for a layout, no necessity arises for the plaintiff to give a gift deed in favour of the 1st defendant to the purpose of a



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public road. The court below has clearly held that the 1st defendant had not proved the existence of a layout plan, muchless, the application filed for formation of a layout and in the absence of the same, the court below held that the passage of 20 feet, which has been demarcated by the plaintiff and in which right has been granted to the purchasers of the plot from the plaintiff cannot be said to be a public road to be used by the general public and to be maintained by the 1st defendant.

22. Further, the court below, based on the Advocate Commissioner's report has held that the 20 feet wide passage does not run the full stretch, but stops within the area of the land, which is the property of the plaintiff and, therefore, the said road cannot be inferred or held to be a public road and no objection was filed by the 1st defendant to the said report of the Advocate Commissioner.

23. In fact, the plaintiff's counsel had submitted that a road exists in the said land of the plaintiff, of which right has been granted to the owners of the two plots to use the same and that it is only a private road. In the aforesaid



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backdrop, while the court below held that the 1st defendant has not proved the existence of a public road or the formation of a public road by approval of layout in the lands of the plaintiff, however, had granted permanent injunction as prayed for by the plaintiff against all the defendants, which includes defendants 2 and 3, who are the purchasers of land from the plaintiff.

24. However, it is borne out by record as also revealed by the order passed by the court below in O.S. No.215/1998 that the 20 feet wide passage has been permitted to be used by the purchasers of the land sold by the petitioner's mother. Further, through the said 20 feet wide passage, water and electricity and other public utility lines have been laid. The petitioner has not disputed the aforesaid facts, as is stated by the 1st defendant in the suit with regard to utilization of the said passage for the purpose of laying public utility lines. The only ground on which the plaintiff has filed the suit is that no layout has been formed and, therefore, the passage cannot be said to be a public road. The order passed by the trial court also proceeds on the said premise and relief has been granted in favour of the plaintiff.



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25. The court below has not adverted to any of the aforesaid facts with regard to the water, electricity and other public utility lines passing through the 20 feet wide passage earmarked for the purpose of use by the petitioner and the purchasers of the plot. Once the petitioner's mother, viz., the plaintiff in the suit, had permitted the 3rd respondent to lay water, electricity and other public utility lines, which require the movement of personnel, it would not be open for the petitioner to curtail the movement of the personnel of the 3rd respondent as also the personnel of other Government agencies, who have utilised the said pathway for the purpose of providing public utility lines to the adjacent land owners. Equally, the petitioner also cannot extinguish the right of the purchasers from utilising the pathway, when it is the conscious acceptance of the vendor in the sale deed that the purchasers would be entitled and have a right to use the said 20 feet wide pathway.

26. In this regard, useful reference can be had to the decision of the Division Bench of this Court in the case of ***T.G.Naveen & Ors. – Vs – The Chairman, Tamil Nadu Electricity Board & Ors. (MANU/TN/3798/2021)***,



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wherein the Division Bench had occasion to consider the equivalency between an approved and an unapproved layout and in the said context, held as under :-

“ 20. Whether it is an approved or an unapproved layout, once the piece of land has been shown as a road promising the purchasers that the access is available through those roads to reach their plots, it would get the character of road and it should be used only for road purpose and it can neither be converted nor divested for any other purpose or claimed as private property by the developer. Admittedly, the road portions are comprised in S.No.287/1A3 and 287/1A4. As rightly pointed out by Mr.V.Jayaprakash Narayanan, learned Government Pleader relying upon the circulars dated 13.02.2006 issued by the Director of Town and Country Planning and circular dated 02.07.2012 issued by the Commissioner of Survey and Settlement, once a portion of the land in the unapproved layout is shown as common area, it should be set apart for public utility and should be separated from the rest of the lands. The relevant portion of the circular dated 13.02.2006 reads as follows:

“At any circumstances, such a road in the layout should not end at spaces earmarked as “owners use” while deprives of an access to the adjacent land owner.” In the circular dated 02.07.2012, the following guidelines have been given with regard to the roads and other places set apart for public utility:



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“(i) In respect of unapproved layouts, roads and other places set apart for public utility should be separated and the rest of lands should be surveyed and sub divided – based on the title deeds such as sale deeds, settlement deeds, gift deeds, relinquishment deeds, etc., and assigned separate T.S./Survey/Sub division Number (both in towns and villages, i.e., Town and Cadastral Survey). Title (name of owner) should be clearly indicated in 'A' Register/Chitta, etc.,

(ii) In respect of approved layouts, each holding should be separately surveyed and sub divided – based on the title deeds such as sale deeds, settlement deeds, gift deeds, relinquishment deeds, etc., and assigned separate T.S./Survey/Sub division Number. Title (name of owner) should be clearly indicated in 'A' Register/Chitta, etc.,

(iii) In respect of both approved and unapproved layouts where space is allocated for roads and public utilities, they should be surveyed separately and assigned separate T.S./Survey/Sub division Number. This should be in the name of Government or Local Body agencies as the case may be, in the case of approved layouts provided they have been handover and/or taken over.

(iv) In respect of unapproved layouts, the common areas till they are handed over/taken over by Government/local bodies, etc, will bear a joint Patta in the names of all the owners of the unapproved layout and will not be labelled as road, etc. since this involves the jurisdiction of the local body/other Government departments.” Therefore, it is clear that even in an unapproved



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layout, the piece of land which has been shown as road and other places set apart for public utility cannot be used for any other purposes and it should be separated from the rest of the land and it will bear a joint patta in the name of all the owners of the unapproved layout.

* * * * *

22. From the above Rule, Circulars and judgments it is very clear that once a piece of land has been shown as road or pathway, it should be used and known as only road and no one including the developer has got any right over the property. It should be called as public road or it is available for the use of persons who purchased the plots in the unapproved layout.

23. Once a piece of land has been earmarked as road or street, it acquires the status of a public land and it is meant for use by all the persons who purchased plots in the layout. Without access to the plots, nobody would come forward to purchase the property. Further, the person who purchases the plot would become the joint owner of the said piece of land earmarked as road or street. The piece of land earmarked as road would become a part and parcel of every plot and therefore, by no stretch of imagination, it can be claimed as private land or private property as claimed by the appellants."



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27. From the aforesaid decision, it is evident that once a piece of land has been shown as a road promising the purchasers that access is available through those roads to reach their plots, it would get the character of road and it should be used only for road purpose and it can neither be converted nor divested for any other purpose. In the case on hand, a portion of the property has been sold to two individuals. Though there is no approval for a layout, however, the sale of the portion of the property would bring the land within the ambit of an unapproved layout.

28. In the aforesaid circumstances, the settlement deed dated 18.1.2006 executed by the petitioner's mother settling the property on the petitioner, inclusive of the 20 feet wide passage, which is permitted to be used by the purchasers and also utilised for the purpose of laying the public utility lines, cannot be settled in favour of the petitioner as the act of the petitioner's mother in allowing the utilisation of the land for laying the public utility lines would in effect modify the character of the 20 feet wide passage into one having a public utility character. Further, the said settlement would not confer any right on the petitioner to the said portion of land, as the said land cannot be converted or



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divested for any other purpose. Therefore, the petitioner cannot enforce the settlement deed in respect of the 20 feet wide passage, and no construction of any nature either on land or over the said passage by the petitioner is permissible. The ingress and egress of the purchasers as also their easmentary rights cannot be curtailed or robbed of by the petitioner by utilising the said 20 feet wide passage for the purpose of construction of a shopping complex. At best, leaving aside the 20 feet wide passage, the petitioner would be at liberty to construct the shopping complex and the shopping complex cannot be inclusive of the 20 feet wide passage.

29. It is to be pointed out that the 5th respondent herein is not a purchaser of land from the petitioner's mother. Rather, the 5th respondent has purchased land in an adjacent layout. The 7th respondent's father had purchased land from the petitioner's mother and if at all any person has a grievance against the refusal to use the passage in the land belonging to the petitioner, it could only be the 7th respondent. However, as it transpires from the decree granted by the court below in O.S. No.215/1998, injunction has been granted against all the defendants in the said suit, meaning thereby, the court below had injuncted even



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the bona fide purchasers of the land from the petitioner's mother from using the 20 feet wide passage, though it has been the intent of the vendor, viz., the petitioner's mother to grant rights to the purchasers to use the 20 feet wide path, which has been earmarked in the land of the petitioner's mother, as is evident even from the recitals in the sale deed. Therefore, the injunction granted in favour of defendants 2 and 3 in the suit, viz., the 7th respondent herein cannot be allowed to survive. The court below has not properly adverted to the aforesaid facts while granting the order of injunction.

30. Taking all the above factors into consideration, the 1st respondent has passed the impugned order, which cannot be said to be wholly perverse. However, to the limited extent, it is to be stressed that in the light of the circular referred to in the decision in *Naveen's case (supra)*, in respect of the unapproved layouts, the common areas till they are handed over or taken over by the Government or local bodies, etc., will have to be held on joint patta in the names of all the owners of the unapproved layout. In such circumstances, the proper course that ought to have been adopted by the 1st respondent is to have kept the patta in the name of the petitioner as also the purchasers till such time it is taken



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over by the Government/local body. Therefore, to the said extent, necessarily certain modification has to be made in the order passed by the 1st respondent.

31. For the reasons aforesaid, this writ petition fails and the same is dismissed and it is made clear that the ingress and egress of the purchasers as also the public authorities in the said pathway shall not be curtailed and the permanent injunction granted by the trial court in O.S. No.215/1998 with respect to the 20 feet wide passage would not stand in the way of the purchasers as also the public authorities from using the said pathway. Further, this Court directs respondents 1, 2 and 4 to modify the patta in respect of the 20 feet wide passage and retain the same in the name of the petitioner as also the purchasers till such time the same is taken over by the Government/local body.

32. In the result, the writ petition is dismissed with the aforesaid observations and directions. Consequently, WMP No.32590/17 is allowed, by vacating the order of interim stay already granted by this Court. There shall be no order as to costs.



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Index : Yes / No

Internet : Yes / No

GLN

To

1. District Revenue Officer
Collectorate, Sathuvachari
Vellore 632 009.
2. Revenue Divisional Officer
Vellore.
3. The President
Dharapadavedu Panchayat
Katpadi, Vellore District.
4. Tahsildar
Katpadi Taluk, Katpadi.



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M.DHANDAPANI, J.

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**PRE-DELIVERY ORDER IN
W.P. NO. 30696 OF 2016**

**Pronounced on
18.11.2022**