



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA
AND

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

W.P.NO.21784 OF 2021

AND

W.M.P.NO.22966 OF 2021

P.D.Muthusamy

... Petitioner

vs

1. The District Collector,
District Collector Office,
Perambalur Taluk,
Perambalur District.
2. The President of Panchayat/Executive Officer,
Pilimisai Village,
Alathur Union,
Perambalur District.
3. The Block Development Officer,
Panchayat Union,
Alathur Village and Post,
Alathur Taluk,
Perambalur District.
4. The Assistant Director for Village Panchayat,
District Collectorate,
Perambalur.
5. N.Ramalingam.
6. The Tahsildar,
Alathur Village and Post,
Alathur Taluk,
Perambalur District.

... Respondents

[R6 impleaded vide order dated 03.01.2022 made in WMP No.29105 of 2021 in W.P.No.21784 of 2021 by MKKSJ & VSGJ]



Prayer: Petition filed under Article 226 of the Constitution of India to issue a writ of mandamus forbearing the respondents 1 to 4 from constructing Cement Bridge and Drainage in the North-South Road situate in S.F.No.255/1, Pilimisai Village, Alathur Taluk, Perambalur District without removing the encroachments made by the 5th respondent, pursuant to the Memorandum in Na.Ka.1265/2021/A6, dated 13.09.2021 issued by the fourth respondent.

For Petitioner : Mr.P.Valliappan

For Respondents : Mr.K.V.Sajeev Kumar,
1-4 & 6 Special Government Pleader

For Respondent 5 : Mr.C.Prabakaran

ORDER

[Order of this Court was delivered by T.RAJA, J.]

The petitioner, Mr.P.D.Muthusamy, S/o.Duraisamy Padayachi, has brought this Writ Petition for issuance of Writ of Mandamus under Article 226 of the Constitution of India forbearing the respondents 1 to 4 from constructing Cement Bridge and Drainage in the North-South Road situate in S.F.No.255/1, Pilimisai Village, Alathur Taluk, Perambalur District without removing the encroachments made by the fifth respondent, pursuant to the Memorandum in Na.Ka.1265/2021/A6, dated 13.09.2021 issued by the Assistant Director for Village Panchayat, District Collectorate, Perambalur/fourth respondent herein.

2.Mr.P.Valliappan, learned counsel for the petitioner would submit that the petitioner's property measuring an extent of 3.5 cents situate in S.F.No.255/3, Pilimisai Village, Alathur Taluk, Perambalur District, lies on the east of North-South road situate in S.F.No.255/1. While so, one N.Ramalingam, fifth respondent herein, owns land in S.F.No.256/17 on the west of North-South road which runs between the lands of the petitioner and the fifth respondent. The North-South road is a public road connecting the other roads. When the original width of the North-South road was about 35 feet as per the plans maintained by the Revenue Department before the advent of Natham Nilavari Thittam in Athanur (South) Village, the fifth respondent has encroached a major portion of the road thereby reducing it from 35 feet to 7 feet. When the Revenue Divisional Officer,



Perambalur directed removal of the encroachments made by the fifth respondent on 23.01.2004 for the reason that he has encroached a major portion of the North-South road, the fifth respondent filed two suits viz., O.S.No.63 of 2004 seeking declaration that the order dated 04.07.2003 passed by the Revenue Divisional Officer, Perambalur, cancelling the patta issued in favour of the fifth respondent as null and void and O.S.No.139 of 2009 seeking declaration that the order dated 20.03.2009 passed by the District Revenue Officer, Perambalur, as null and void and for consequential relief of injunction, before the District Munsif Court, Perambalur.

3.Learned Counsel appearing for the petitioner also by relying upon Section 14 of the Tamil Nadu Patta Passbook Act, 1983, submitted that when the Tamil Nadu Patta Passbook Act, 1983 exclusively deals with grant of patta and cancellation of patta, even if any erroneous order is passed by the Revenue Authorities, namely, Tahsildar or Revenue Divisional Officer or District Revenue Officer, no suit is maintainable against the said order. He pleaded that the prayer in the suit does not show that the fifth respondent has asked for any decree for title or declaratory relief on the land in question. Therefore, as per Section 14 of the Tamil Nadu Patta Passbook Act, 1983 both the aforementioned suits are not even legally maintainable. Arguing further, he would submit that when this Court by order dated 03.04.2017 in C.R.P.Nos.1211 and 1212 of 2017 has given a specific and clear direction to the learned District Munsif, Perambalur, to try both the suits together and dispose of the same within a period of six months from the date of receipt of a copy of the order, the learned District Munsif, Perambalur, for the reasons best known to him, has not even come forward to comply with the order in spite of the fact that there has been huge passage of four years time. Therefore, a suitable direction may be issued directing the respondents 1 to 4 to proceed with the construction of the bridge in Survey No.255/1 as there is no order of injunction or stay passed either by this Court or Revenue Authorities or by any Civil Court.

4.Mr.C.Prabakaran, learned Counsel for the fifth respondent also fairly stated before this Court that the revenue authorities viz., the respondents 1 to 4 herein can proceed with the construction of the bridge in Survey No.255/1. He has brought out a caveat saying that the aforementioned two suits have been filed based on six sale deeds. Therefore, subject to the result of the two suits, the construction of the bridge in Survey No.255/1 can be proceeded with after removing all the encroachments, for which, he has no objection.



5.Learned Special Government Pleader also stated that when the Tahsildar has issued patta in favour of the fifth respondent that was cancelled by the Revenue Divisional Officer, Perambalur and aggrieved thereby the fifth respondent has filed the two suits viz., O.S.No.63 of 2004 seeking to cancel the order passed by the Revenue Divisional Officer, Perambalur and O.S.No.139 of 2009 challenging the correctness of the order passed by the District Revenue Officer, Perambalur. But no authority has till date passed any order injuncting or preventing the revenue authorities from proceeding with the construction of bridge in Survey No.255/1. But for the reason that the two suits are pending for quiet long time, with abundant caution, the respondents do not wish to precipitate the matter. Therefore, they have not proceeded with the construction of bridge.

6.This Court finds merits on the submission made by the learned Special Government Pleader and also by all the parties. In view of the fact that when the aforementioned two suits filed by the fifth respondent are not even legally maintainable as per Section 14 of the Tamil Nadu Patta Passbook Act, 1983, the respondents are not even able to proceed with the construction of the bridge by removing the encroachments pointed out by the petitioner. Secondly, in spite of the direction issued by this Court on 03.04.2017 in in C.R.P.Nos.1211 and 1212 of 2017, even after the passage of four years time, the suits are not even taken up. Therefore, a suitable direction needs be issued directing the respondents 1 to 4 to proceed with the construction of the bridge in Survey No.255/1 as there is no order of injunction or stay passed either by this Court or Revenue Authorities or by any Civil Court. Accordingly, we direct the respondents 1 to 4 to proceed with the construction of the bridge in Survey No.255/1 by removing all the encroachments put up either by the petitioner or by the fifth respondent on the basis of the revenue records within a period of six months from the date of receipt of a copy of this order.

7.With the above direction, this Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

srm



To

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Perambalur District.

+1cc to M/s.P.Valliappan, Advocate, S.R.No.8911

+1cc to M/s.C.Prabakaran, Advocate, S.R.No.8926

W.P.No.21784 of 2021

MG (CO)
RLP (28/04/2022)