



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2022

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.30092 of 2019

and

WMP.No.30039 of 2019

M.Rajammal

... Petitioner

-Vs-

1. The Collector of Namakkal District,
Namakkal.

2. The Tahsildar,
Rasipuram Taluk,
Anaipalayam Village, Namakkal District

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus forbearing the respondents from taking forcible possession of the pathway comprised in survey No.52/3 and 52/4, Annaipalayam Village, Rasipuram Taluk, Namakkal District, without following due process of law.

For Petitioner : Mr.C.Ramesh

For Respondents : Mr.A.M.Ayyadurai,
Government Advocate

ORDER

The Writ Petition has been filed for direction forbearing the respondents from taking forcible possession of the pathway comprised in survey No.52/3 and 52/4, Annaipalayam Village, Rasipuram Taluk, Namakkal District, without following due process of law.

2. Heard, Mr.C.Ramesh, the learned counsel for the petitioner, and Mr.A.M.Ayyadurai, Government Advocate appearing for the respondents.

3. The case of the petitioner is that the property comprised in survey No.52/2 admeasuring 17 cents situated at



Door No.4/14 Vettukadu, Anaipalayam, Rasipuram Taluk, Namakkal District belonged to the petitioner's father in law, who also acquired adjacent lands from his ancestors. After demise of her father in law, the said properties were orally partitioned between her husband and other family members. Accordingly, the above said property to an extent of 17 cents was allotted in favour of her husband. After demise of her husband, patta was issued in favour of the petitioner. There is a pathway from the panchayat road leading to her property with width of 12 feet for a length of 70 feet. A portion of the pathway is in Government poramboke land which is comprised in survey No.52/4. It stands in the name of one, Murugesan in the 'A' register. However, the Government claims to be poramboke land. There was a dispute over the passage with the petitioner's co-owners and as such the petitioner was constrained to file suit in OS.No.8 of 2013 on the file of the District Munsif Court, Rasipuram for declaration of her usage right over the pathway. In the said suit, the respondents are also arrayed as defendants. They were set exparte and the suit was decreed in favour of the petitioner. The respondents have proceeded to develop the adjacent lands for constructing tenements for public and in that process, have dug the adjacent lands including the pathway. Therefore, the petitioner lodged complaint before the first respondent.

4. On perusal of the counter filed by the second respondent, revealed that the land comprised in survey No.52/4 of Anaipalayam Village, Rasipuram Taluk admeasuring 0.63.5 hectares is classified as 'waste' in village accounts. On the southern side of the said land from bye-pass route at Anaipalayam main road is passing. Abutting the said road on the western side in survey No.52/4, the petitioner is using a portion of the land as access to her house situated in survey No.52/2. At the request of the Executive Engineer, Tamilnadu Slum Clearance Board of allotment of land for construction of houses to all under noble policy of the Government, the land comprised in survey No.52/4 to an extent of 0.63.5 hectares was selected and transferred in the name of the Tamilnadu Slum Clearance Board and permission to enter upon the said land was accorded by the first respondent's proceedings ROC.35907/2017 dated 25.01.2019. Further revealed that the land comprised in survey No.52/3 stands in the name of one, Ammaniammal and the land comprised in survey No.52/4 classified as 'waste' in the village accounts. Therefore, the petitioner has no locus to claim any right over the said property. The said Ammaniammal is one of the defendants in the suit filed by the petitioner in OS.No.8 of 2013.

5. In view of the above, the respondents shall not take forcible action to take possession in respect of the property comprised in survey No.52/3 and 52/4 situated at Anaipalayam



Village, Rasipuram Taluk, Namakkal District without following due process of law.

6. With the above direction, this writ petition is disposed of. Consequently, connected miscellaneous petition is closed. No order as to costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Collector of Namakkal District,
Namakkal.
2. The Tahsildar,
Rasipuram Taluk,
Anaipalayam Village,
Namakkal District.

+1cc to Mr.C.Ramesh, Advocate, S.R.No.6776

+1cc to the Government Pleader, S.R.No.6817

+1cc to Mr.C.Ramesh, Advocate, S.R.No.6776 (23/02/2022)

W.P. No.30092 of 2019

BS(CO)
SU(17/02/2022)