



W.P.No.29198 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2023

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Petition No. 29198 of 2018
and
W.M.P. Nos. 34148 & 34150 of 2018
WMP No. 8666 of 2019

K. Palanisamy

.. Petitioner

Versus

1. State of Tamil Nadu
represented by its Principal Secretary to Government
Revenue Department
Fort St.George, Chennai 600 009
2. The District Collector
Salem District, Salem
3. The District Revenue Officer
Salem District, Salem.
4. The Sub-Collector / Revenue Divisional Officer
Mettur Revenue Division,
Mettur Dam, Salem District.
5. The Tahsildar,
Omalur Taluk, Omalur, Salem District
6. The Taluk Surveyor
Omalur Taluk, Omalur, Salem District



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7. The Village Administrative Officer,
Karuppur Revenue Village,
Karuppur, Omalur Taluk, Salem District.

8. The Executive Officer,
Karuppur Town Panchayat,
Karuppur, Omalur Taluk, Salem District.

9. P. Elango
S/o.Palraj

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the impugned order dated 31.08.2018 made in Na.Ka.3038/17-C passed by the fourth respondent and quash the same, consequently forbear the respondents 2 to 7 and 9 and their subordinates from interfering in any manner into the petitioner's peaceful possession and enjoyment of property in Survey No.121/3A, an extent of 1.61 acres, situated at Karuppur Village, Omalur Taluk, Salem District.

For Petitioner	:	Mr. M.R. Jothimanian
For RR1 to 7	:	Mr. A. Selvendran Special Government Pleader
For R8	:	Mr. R. Udayakumar
For R9	:	Mr. Kandan Doraisamy for Mr. Muthumani Doraisamy

ORDER

[Order of the Court was made by R. MAHADEVAN, J]

The petitioner has filed this writ petition to issue a Writ of Certiorarified Mandamus to call for the records relating to the order dated 31.08.2018 passed by the fourth respondent, quash the same and consequently forbear the



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respondents 2 to 7 and 9 and their subordinates from in any manner interfering into his possession and enjoyment of the property comprised in Survey No.121/3A measuring an extent of 1.61 acres, situated at Karuppur Village, Omalur Taluk, Salem District.

2. (i) In the affidavit filed in support of the writ petition, it is stated by the petitioner that he is a retired soldier from the Indian Army. It is further stated that he is the absolute owner of the land comprised in Survey No.121/3A (Old S.No.121/1) bearing Patta No.88 measuring an extent of 1.61 acres in Karuppur Village, Omalur Taluk, Salem District having acquired the same by way of sale deed and settlement deed dated 17.07.1964 and 10.09.1958, respectively. According to the petitioner, the revenue records in respect of the aforesaid land stood in the name of the father of the petitioner and he and his family are in possession of the aforesaid land till date without any obstructions. While so, on 08.10.2005, a group of persons led by one Ramasamy and others attempted to interfere with his possession. The petitioner has therefore given a complaint to the Police officials, but no action was taken thereof. While so, one Nallammal and others filed a suit in O.S. No.55 of 2009 before the District Munsif-cum-Judicial Magistrate, Omalur against his father Kumarappan and others in which the petitioner was arrayed



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as third defendant. The said suit in O.S. No. 55 of 2009 was filed for the relief of bare injunction restraining the defendants and their men from in any manner disturbing the plaintiffs' peaceful possession of the suit cart-track, either by obstruction or by obliterating it to any single extent or by any other means. Subsequently, another suit in O.S. No. 204 of 2014 was filed by the above said Ramasamy and others before the same Court against the petitioner's father and others in which the petitioner was arrayed as third defendant. The suit in O.S. No. 204 of 2014 was filed for the relief of bare injunction restraining the defendants 1 to 4, their men, servants or any one from disturbing the plaintiffs' enjoyment in Suit A Schedule, either by encroaching it or by any other means and for a Mandatory injunction directing the defendants 5 to 8 to correct the extent of the land in Survey No.121/3A bearing Patta No.88 in the name of the first defendant as 1.55 acres within a time to be specified by the Court.

(ii) The petitioner contested the suits by filing written statement. After contest, by a common judgment dated 25.11.2016, the suits in O.S. Nos. 55 of 2009 and 204 of 2014 were dismissed. In spite of dismissal of the suits, the aforesaid persons continuously disturbed the peaceful possession of the petitioner and even prevented him from fencing his own land. While so, another suit in O.S. No. 320 of 2016 was filed for bare injunction by claiming that the petitioner and his family members have encroached upon a common



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public pathway. This suit was also contested by the petitioner and ultimately it was dismissed on 11.06.2018.

(iii) As the petitioner's possession was continuously disturbed by third parties, he has given complaints on 21.10.2016, 29.05.2017 and 30.05.2017 to the jurisdictional police, but they were not acted upon. Therefore, the petitioner filed Crl.OP. No.11933 of 2017 before this Court seeking to grant him police protection to fence his land. By order dated 23.06.2017, this Court directed the officials attached to Omalur Taluk Police Station to grant police protection to the petitioner so as to enable him to fence his property.

(iv) At this stage, the 9th respondent herein has filed WP No. 26310 of 2017 before this Court to issue a Writ of Mandamus directing the respondents 1 to 4 to consider and pass orders on his representation dated 05.08.2017. In the representation dated 05.08.2017, it was alleged by the 9th respondent that the petitioner has encroached the water channel and constructed his house thereof and hence, requested to remove the said encroachment. By order dated 06.11.2017 passed in WP No. 26310 of 2017, this Court directed the fourth respondent therein - Tahsildar, Omalur Taluk, to consider the representation of the ninth respondent and to pass orders thereon. Pursuant to the order dated 06.11.2017 a notice was issued to the petitioner and the ninth respondent herein to appear for an enquiry. After such enquiry, on 16.02.2018, the fifth



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respondent herein, Tahsildar, Omalur Taluk, has passed an order stating that there is no encroachment of any water channel as alleged and the land in Survey No.121/3A is the private land of the petitioner. Aggrieved by the order dated 16.02.2018 of the fifth respondent, the ninth respondent has filed an appeal before the fourth respondent. The fourth respondent, without affording any opportunity to the petitioner or conducting an enquiry, passed the order dated 31.08.2018 holding that the petitioner had encroached upon the land in Survey No.121/3A and directed the revenue authorities to remove the same. Challenging the order dated 31.08.2018 of the fourth respondent, the petitioner has filed the present writ petition.

3. The learned counsel for the petitioner submitted that the fourth respondent, without issuing any notice or giving opportunity of hearing to the petitioner, has passed the impugned order in the appeal filed by the ninth respondent. He further submitted that the fourth respondent failed to consider the entire documents in favour of the petitioner, including the decree and judgment passed by the Civil Court in the suits filed against the petitioner and others. Thus, it is his submission that the impugned order has been passed by the fourth respondent in violation of principles of natural justice and hence, prayed for allowing the writ petition by setting aside the same.



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4. The learned Special Government Pleader appearing for the respondents 1 to 7 fairly submitted that the petitioner has not been given any notice or afforded an opportunity of hearing before the order dated 31.08.2018 was passed by the fourth respondent.

5. In view of the above submissions, without going into the merits of case, we are inclined to set aside the order dated 31.08.2018 passed by the fourth respondent. Accordingly, the order dated 31.08.2018 is set aside and the matter is remanded to the fourth respondent for fresh consideration. The fourth respondent is directed to afford an opportunity of hearing to the petitioner as well as the ninth respondent and pass appropriate orders or merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order. It is open to the petitioner to produce all the documentary evidence including the decree and judgment passed by the Civil Court to the fourth respondent to substantiate his defence.

6. With the aforesaid directions, this writ petition stands disposed of. No costs. Connected W.M.Ps. are closed.

[R.M.D., J]

[M.S.Q., J]

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nsd/rsh

Index: Yes / No

Speaking Order / Non-speaking Order

Neutral Citation : Yes / No

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