



W.P.(MD)No.1454 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.10.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD)No.1454 of 2020

S.Jansirani

... Petitioner

Vs

1.The District Collector,
Virudhunagar District,
Virudhunagar.

2.The Divisional Revenue Officer,
Sivakasi,
Virudhunagar District.

3.The Assistant Director of Land Survey,
Office of the Assistant Director of Land Survey,
Collectorate Complex,
Virudhunagar.

4.The Tahsildar,
Sivakasi Taluk,
Sivakasi,
Virudhunagar District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records culminated in Na.Ka.No.S.1/5459/2019, dated 22.11.2019, issued by the fourth respondent and quash the same along with a direction to follow the recommendations of the third respondent in



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Na.Ka.A4/3630/2018, dated 22.02.2019 and signed on 19.03.2019 and reconvert T.S.No.190 of Sivakasi Municipality in the name of “Jansirani”.

For Petitioner : Mr.D.Dhana Chandra Prakash

For Respondents : Ms.D.Farjana Ghoushia
Special Government Pleader

ORDER

This writ petition has been filed challenging the impugned proceedings issued by the fourth respondent in Na.Ka.No.S.1/5459/2019, dated 22.11.2019 and for a consequential direction to the fourth respondent to act upon the proceedings of the third respondent, dated 22.02.2019 and to reconvert T.S.No.190 as “Ryotmanai” and issue patta in the name of the petitioner.

2. Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents.

3. The case of the petitioner is that she is having house property at Door Nos.188A, 188, 187/5 and 187/4 totally measuring to an extent of 1317.75 Square Feet. The petitioner is claiming title to the property by virtue of a registered sale deed, dated 05.09.1994. Further, the



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case of the petitioner is that there was a vacant site measuring to an extent of 6 feet x 63 feet running from North to South which has been converted as a pathway by the Sivakasi Municipality. According to the petitioner, the private vacant site was illegally converted into a public pathway without issuing any notice to the petitioner. In view of the same, the petitioner made a representation to the third respondent seeking for reconversion of T.S.No.190 and to issue patta in favour of the petitioner. The third respondent through the proceedings, dated 22.02.2019, recommended for reconversion of the land in T.S.No.190 as “Ryotmanai” and for issuance of patta in favour of the petitioner.

4. The grievance of the petitioner is that the fourth respondent without considering the recommendation made by the third respondent, proceeded to issue the impugned proceedings, dated 22.11.2019 and rejected the claim made by the petitioner. Aggrieved by the same, the present writ petition has been filed before this Court.

5. When this writ petition was entertained by this Court, an Advocate Commissioner was appointed by an order, dated 23.06.2023.



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This Court directed the Advocate Commissioner to find out as to whether the persons occupying Survey Nos.193 and 194 have an alternate access other than the pathway shown in T.S.No.190. Accordingly, the Advocate Commissioner also conducted a survey in the presence of the officials and a report has been filed before this Court. The relevant portions in the report are extracted hereunder:

“It is submitted that after perusal of the above said Order I had issued a notice to the respondent Nos.2 to 4 dated, 04.07.2023 as to find out an alternate access for the person occupied in Survey Nos.193 and 194 and to made presence there. In pursuant to that on 08.07.2023 at 10 a.m. I along with the Surveyor and Village Administrative Officer of Sivakasi, Virudhunagar District conduct the survey in above said lands and said survey was conducted in the presence of said officials and advocate of writ petitioner and after completing the survey and made enquiries with official as there any other alternative pathway is available other than pathway in Survey No.190. In pursuant to the record and reply of the officials as there is no alternative pathway found out in the



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said field. Based on records and statement of the persons presence over there sought there is no existence of alternative pathway for the person residing in the Survey Nos.193 and 194. Thus, the pathway in the Survey No.190 is only way for footpath for the persons residing the said survey number.”

6. There is no dispute with regard to the fact that Survey No.190 has been shown in the revenue records as Municipal Street (சுருது). The petitioner also does not dispute the fact that it is a pathway. However, according to the petitioner, the pathway in T.S.No.190 is a private pathway and it was in existence even when the petitioner purchased the properties through the registered sale deed, dated 05.09.1994 and it was so put to use even by the vendor of the petitioner. Therefore, according to the petitioner, Sivakasi Municipality had illegally converted it into a public pathway and that has been put to question by the petitioner.

7. The fourth respondent has gone by the entries made in the revenue records and found that the property in T.S.No.190 is a Municipal Street (சுருது). The fourth respondent has not taken into consideration the



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proceedings of the third respondent, dated 22.02.2019. The third respondent has submitted a report before the first respondent and in that regard, the third respondent has come up with a finding that T.S.No.190 has been wrongly classified as a “Sarkar Poramboke” and it requires reconversion into “Ryotmanai”. The third respondent has recommended to the first respondent that patta can be granted in favour of the petitioner. This communication was made by the third respondent based on the report collected from the Tahsildar, Sivakasi. In the light of this report submitted by the third respondent, the fourth respondent ought to have considered the same while dealing with the request made by the petitioner. Unfortunately, the fourth respondent has parallely issued the impugned proceedings which runs contrary to the findings of the third respondent.

8. This Court also cannot lose sight of the fact that the occupants of the property in Survey Nos.193 and 194 also have access to the main road only through the pathway situated at T.S.No.190. The report of the Advocate Commissioner shows that these occupants do not have any other alternative pathway to reach the main road. However, this touches upon the elementary rights of the occupants of Survey Nos.193 and 194



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and it will have nothing to do with the classification of the land in T.S.No. 190. In other words, the right of the occupants of Survey Nos.193 and 194 is independent of the classification that is going to be made with respect to the property in T.S.No.190.

9. In the light of the above discussion, the impugned proceedings issued by the fourth respondent in Na.Ka.No.S1/5459/2019, dated 22.11.2019, is hereby set aside. The matter is remanded back to the file of the fourth respondent. There shall be a direction to the fourth respondent to deal with the application submitted by the petitioner, in the light of the proceedings of the third respondent, dated 22.02.2019. While undertaking this exercise, the occupants of Survey Nos.193 and 194 shall also be put on notice. Ultimately, the scope of the enquiry on the part of the fourth respondent will confine itself only to the determination of the nature of property in Survey No.190 in the light of the proceedings of the third respondent, dated 22.02.2019. The usage of T.S.No.190 by the occupants of Survey Nos.193 and 194 will not be a determinative factor to arrive at the conclusion with regard to the nature of the property in T.S.No. 190. That is a dispute which has to be independently agitated by the



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petitioner and the occupants of Survey Nos.193 and 194. This shall be kept in mind by the fourth respondent before reaching a final conclusion.

The fourth respondent is directed to pass appropriate orders in the light of the findings rendered by this Court within a period of twelve (12) weeks from the date of receipt of a copy of this order.

10. This Court fixed the remuneration of the Advocate Commissioner at a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) and out of this, a sum of Rs.12,500/- (Rupees Twelve Thousand Five Hundred only) has been paid on the side of the petitioner. The learned Special Government Pleader submitted that the balance of Rs.12,500/- (Rupees Twelve Thousand Five Hundred only) will be paid by the fourth respondent within a period of two days from today (03.10.2023) to the Advocate Commissioner.

11. In the result, the Writ Petition is allowed, with these above directions. This submission is recorded. No costs.

03.10.2023

NCC:yes/no
Index:yes/no
Internet:yes/no

tsg



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To

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N.ANAND VENKATESH, J.

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