



W.P.(MD)No.15948 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 15.11.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD)No.15948 of 2021

and

W.M.P.(MD)No.12883 of 2021

E.Hema Rubini

... Petitioner

vs.

1.The District Collector,
Sivagangai District, Sivagangai.

2.The Tahsildar,
Singampunari Taluk, Sivagangai.

3.The Block Development Officer,
Singampunari Panchayat Union, Sivagangai District.

4.The President,
Muriyur Village Panchayat, Muriyar Village Panchayat Office,
Muraiyur, Singampunari, Sivagangai District.

5.Pon.Sekar

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the 1st to 4th Respondents to remove the road constructed upon the Petitioner's patta land in Survey No.303/3 situated at Muraiyur Village, Singampunari Taluk Sivagangai District and restore the same to its original condition



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prior to the construction activity and hand over the possession of the same to the petitioner and to direct the 1st respondent to take necessary action against the 4th Respondent for abusing his power and exceeding his authority ultra vires the legal procedure and process.

For Petitioner	:Mr.A.Haja Mohideen
For R1 and R2	:Mr.A.K.Manikkam
	Special Government Pleader
For R3 and R4	:Mr.R.Ragavendran
For R5	:Mr.S.Kameshwaran

ORDER

This Writ Petition has been filed for the issue of Writ of Mandamus directing the official respondents to remove the road that has been put up in the patta land belonging to the petitioner in S.No.303/3 at Muraiyur Village, Sivagangai District and to restore the property to its original condition.

2.The case of the petitioner is that the subject property originally belonged to her grandfather and thereby, the petitioner succeeded to the property. The petitioner was residing in Malaysia after she get married and only when she moved back to India, she came to know that the patta lands have been utilised for putting up a road. The petitioner has made a



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representation in this regard and has given a complaint to the police. The petitioner also filed a Writ Petition before this Court in W.P.(MD)No. 14509 of 2020 for a direction to the official respondents not to lay any road in the subject property and this Writ Petition was disposed of by order dated 16.10.2020 directing the official respondents to deal with the representation and to pass orders.

3.The grievance of the petitioner is that in spite of this order passed, no steps were taken to comply with the direction issued by this Court and in the meantime, hasty steps were taken to lay a cement road in the patta land belonging to the petitioner. Hence, the present Writ Petition has been filed before this Court seeking for appropriate direction.

4.The second respondent has filed a counter affidavit and has taken the following stand:

“4.It is submitted that the disputed land in S.No.303/3 having an extent 0.06.00 Hec at Muraiyur group, S.S.Kottai, Singampunari Taluk, Sivagangai District. The said land was in the name of one Gopal and one Shanmugam who were in joint possession and bearing Joint Patta No: 663. The above said gopal has not been identified by any of the village people during



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the course of enquiry. The second patta holder namely shanmugam was residing at Malaysia and died leaving behind his wife namely lakshmi. The said land is vacant at present and the said land was owned by 18 Pangalai vaikaira and therefore the real owner was not identified, since the land was not in possession by anyone and it was used as a pathway of the disputed land by the village people for several years.

5. It is submitted that the said land was used as a pathway by the village people and hence the village people made a request to the respondents during the year 2010 to lay a cement road for their smooth functioning of the pathway. Therefore for the welfare of the general public in order to use the pathway in the above said land, this respondent recommended the Revenue Divisional Officer, Devakkottai to change the revenue records in respect to the 12 feet road in the above said land as a pathway. Moreover the Panchayat resolution was passed that a pathway for public can be used in the above said land to an extent of 12 feet. There are above 40 families residing in and around the village and the people are using the pathway in the above said land for more than 150 years. Further a document bearing No:336 of 1954 discloses a fact that there was a pathway existence in the above said land.

6. It is submitted that the petitioner has not proved her ownership over the above said land and has not produced any material facts to show her ownership over the above said land. The respondents has acted upon for the interest of the general public and laid a cement road for the use of pathway by the village people and moreover the pathway was in existence for long period and was using it by the public. Further the Panchayat resolution was passed and no objection was given by the general public and thereafter the cement road was laid in the above said land. Moreover the pathway runs through several lands of survey nos: and all the owners of the land has given their consent to form a pathway. Further this respondent has recommended vide proceeding in Na.Ka.No.A3/302/2021 dated 25.02.2021 to Revenue Divisional Officer, Devakottai to change the classification of the above said land as a pathway in the revenue records.”



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5.The impleaded fifth respondent has filed a counter affidavit

before this Court and the relevant portions are extracted hereunder:

“2)I respectfully state that, I deny all the allegations contained therein save those that are specially admitted here under.

3) I respectfully submit that, I am residing in the above address. I further submit that, I and 29 families have been using the 3.6 meters starting from survey No.303/3 at Muraiyur Village, Singampunari Taluk, Sivagangai District as public pathway for more than 100 years. I further submit that, the above said 30 families had constructed house in the above said area.

4)I respectfully submit that, I and my villagers made a representation on 15.09.2005 to the 2nd, 3rd and 5th Respondents and requested them to mutate the revenue records in respect of 3.6 meters public pathway starting from above said survey no. 303/3 at Muraiyur village. After that I and other above said survey land owners has given consent letter and also we have no objection to mutate the revenue records the above said 3.6 meters public pathway starting from survey No.303/3 at Muraiyur village, to the above said respondents. Thereafter the 5th Respondent and members had conducted the meeting and passed resolution in resolution number 49 dated 17.09.2005 and recognized the above said our grievance. Thereafter the 2nd Respondent has given the direction to the 3rd Respondent to take action on my representation in his proceedings @MP.11-44251-2010 dated 29.11.2010.”

6.Heard Mr.A.Haja Mohidee, learned Counsel appearing on behalf of the petitioner Mr.A.K.Manikkam, learned Special Government Pleader appearing on behalf of the respondents 1 and 2, Mr.R.Ragavendran,



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learned Counsel appearing on behalf of the respondents 3 and 4 and Mr.S.Kameshwaran, learned Counsel appearing on behalf of the fifth respondent.

7.The claim made by the petitioner and also the impleaded fifth respondent was considered by the second respondent and orders were passed through proceedings dated 25.02.2021. In this order, the Tahsildar, has dealt with the claim made by the petitioner in detail and has come to the conclusion that there was a pathway in existence for a long time and it was used by the people in the village. That apart, the petitioner also did not prove her title and right over the property by producing the relevant documents. It is under these circumstances, the cement road came to be laid.

8.In the considered view of this Court, the petitioner has not challenged the proceeding of the Tahsildar, dated 25.02.2021 and has once again sought for the issuance of Writ of Mandamus before this Court. In any case, the issue involved in this Writ Petition pertains to the determination of title and right over the subject property. The official



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respondents have clearly denied the title of the petitioner. In view of the same, the petitioner has to necessarily establish her right before the competent Civil Court and seek for appropriate relief. The relief as sought for in this Writ Petition cannot be granted by this Court. The Writ Petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Index :Yes / No
Internet :Yes / No
NCC :Yes / No

15.11.2023

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To

1.The District Collector,
Sivagangai District, Sivagangai.

2.The Tahsildar,
Singampunari Taluk, Sivagangai.

3.The Block Development Officer,
Singampunari Panchayat Union, Sivagangai District.



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N.ANAND VENKATESH, J.

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