



W.P.(MD).No.15938 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.08.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.15938 of 2020

and

W.M.P.(MD)No.13333 of 2020

Karuppaiah

... Petitioner

Vs.

1.The District Collector,
Pudukkottai District, Pudukkottai.

2.The District Revenue Officer,
Pudukkottai District, Pudukkottai.

3.The Tahsildar,
Pudukkottai Taluk,
Pudukkottai District.

4.Ammasi

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining the impugned order passed by the 2nd respondent in Na.Ka.No.3915/2020/Aa4, dated 28.09.2020 and to quash the same and consequently, to direct the 1st and 2nd respondents to rectify the mistake in the field map in survey No.732/1 and 732/2 situated at Perunkalur Village, Pudukkottai Taluk and District.



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For Petitioner : Mr.M.Ramu
For R-1 to 3 : Mr.A.K.Manikkam
Special Government Pleader
For R-4 : Mr.R.Suriyanarayanan
Advocate Commissioner : Mr.A.Satheesh Murugan

ORDER

This writ petition is filed for writ of Certiorarified Mandamus, to quash the impugned order dated 28.09.2020 passed by the 2nd respondent and consequently to direct the 1st and 2nd respondents to rectify the mistake in the field map in survey No.732/1 and 732/2 situated at Perunkalur Village, Pudukkottai Taluk and District.

2. Originally the agriculture land in S.No.732/1 situated at Perunkalur Village, Pudukkottai Taluk belongs to one Lakshmana Pillai son of Thatchinamoorthy Pillai and he had sold the land to one Chinnu son of Raman who is residing at Lakshmipuram, Perunkalur Panchayat, Pudukkottai District by registered sale deed in Doc. No. 837/1957 and the land was mutated and Patta No.704 was issued to the said Chinnu and he was enjoying the said land.



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The petitioner purchased the said land in S.No.732/1 to an extent of 0.24.5 Ares from the said Chinnu son of Raman by registered sale deed in Doc. No. 1279/2013 dated 13.10.2013 and transferred patta in the petitioner's name in Patta No. 3728. After purchasing the land, the petitioner was enjoying the same and doing cultivation.

3. The contention of the petitioner is that suddenly, the Village Administrative Officer instructed the petitioner to vacate and hand over the possession of the land. Immediately the petitioner rushed and verified the revenue records and it was found that during UDR proceeding the land in S.No. 732 was sub divided as S.No.732/1 and S.No.732/2. Without inspecting the land and by mistake the respondents had recorded the road is situated in the middle of S.No.732/1. But the road is situated in S.No.732/2 on the North-South. On 01.08.2019 the petitioner submitted a representation to the 2nd respondent to rectify the mistake, the same was taken on file and the same is pending.

4. In the meanwhile, the 3rd respondent called the petitioner for enquiry based on the order passed in W.P.(MD)No.8124 of 2020, which is filed by the



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4th respondent. The 4th respondent had alleged that the petitioner has encroached the alleged pathway. The petitioner had submitted the objection before the 3rd respondent along with all documents. It is the case of the petitioner that the actual pathway was situated in S.No.732/2 and not in the middle of his patta land in S.No.732/1. But the 3rd respondent passed the impugned order stating that since the actual pathway stands in the patta land, even though it is patta land but used as pathway and hence the same should be considered as government land. The respondents declined the explanation submitted by the petitioner. Through the impugned order, the respondents directed the petitioner to vacate the said premises. Hence, the petitioner is before this Court.

5. The 3rd respondent has filed a counter affidavit stating that the petitioner has purchased an extent of 0.27.5. Hectare land in SF.No.732/1 of Perungalur village, Pudukkottai Taluk, Pudukkottai District in the year 2013. The adjoining land in SF.No.732/2 extent 0.24.5 Hectare is classified as "Cart Track Poramboke. Even though, the land in SF.No.732/2 is classified as "Cart Track" in the revenue records, the bitumen (thar road) road actually lies in SF.No.732/1. i.e., in patta land of the petitioner. The petitioner has objected to



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the 3rd respondent for laying the road to his land. In the meanwhile, the 4th respondent has filed a writ petition in W.P(MD)No.8124 of 2020 (Public Interest Litigation) and the Hon'ble Division Bench had directed to consider and remove the encroachment. After enquiry, considering the fact the said cart track lies in the patta land, the public use the cart track pathway (now is being used as pathway) leading to the Lakshmipuram Village and hence the pathway cannot be denied to public. Hence orders issued under Revenue Standing Order 26(15). Even though, the said land in SF.No.732/1 is a patta land, it should be construed as Government land, the Nilaviyal Vandi Pathai and even though the said cart track is running through patta land as per Revenue Standing Order 26(15), it is Government land and public has got every right to use the above said Nilaviyal Vandi Pathai. Since the public pathway is in existence, based on the same, the 3rd respondent has passed the order, dated 28.09.2020. Aggrieved over the same, the petitioner is before this Court.

6. The counter affidavit further states that as per field map the eastern boundary of the S.F.No.731/1 is S.F.No.732/2. The land in SF.No.732/2 was classified as cart track. Even in the settlement records as well as UDR records shows the road is lying in S.F.No.731/3 and 732/1. The petitioner himself has



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encroached in SF.No.732/2 which is classified as cart track poramboke and constructed a well, bore well and also a house with Asbestos sheet. The cart track in S.F.No.732/1 is to be treated as "Nilaviyal vandi pathai". Hence the notice was issued to the petitioner for enquiry under Section 7 of Tamilnadu Encroachment Act, 1905. The petitioner himself has admitted that the cart track leading to the village Lakshmipuram is actually situated in S.F.No.732/1 and not in S.F.No.732/2 as shown detail in the survey map. Enquiry in the village records reveals that there was a mud road in SF.No.732/2 during settlement period and so, the land in SF.No.732/2 was classified as cart track. Subsequently while forming the thar road by considering the land in SF.No. 732/2 which was a low-lying area and with knowledge of the land owners of SF.No.731/3 and 732/1, the thar road was formed. Therefore, the respondents admitted that the "Nilaviyal Vandi Pathai" is encroached by the petitioner and hence, in order to lay thar road a portion of the petitioner's property was taken for laying thar road. However, there is no acquisition proceedings.

7. The 4th respondent who had filed a public interest litigation vehemently objected to the petitioner's claim and had filed typed set of papers and additional typed set of papers. The objection of the 4th respondent is that



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the SF No.732/1 is classified of vari and in that vari only thar road has been laid.

The thar road has been laid by covering S.F.No.732/2, but the petitioner has encroached and has blocked the way by erecting fence and hence, the common public is finding it difficult to use the pathway. Therefore, he preferred a public interest litigation and it was directed to remove the petitioner's encroachment. Therefore, the Learned Counsel appearing for 4th respondent vehemently objected to the claim of the petitioner.

8. Heard Mr.M.Ramu, the Learned Counsel appearing for the petitioner, Mr.A.K.Manikkam, the Learned Special Government Pleader appearing for the respondents 1 to 3, Mr.R.Suriyanarayanan, the Learned Counsel appearing for the 4th respondent and Mr.A.Satheesh Murugan, the Learned Advocate Commissioner and perused the records.

9. The learned Special Government Pleader appearing for the respondents 1 to 3 submitted that even if the cart track passes in the patta land the said road ought to be taken as common pathway and automatically it will be vested with the Government. He relied on the judgment rendered in W.P.No. 30187 of 2017, dated 06.02.2018 and the Hon'ble Division Bench of this Court



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has held as under:

“21. At the risk of repetition, this Court unhesitatingly points out that the Nilaviyal Vandi Pathai (cart track) running through the patta land is owned by the Government and when the third respondent-Tahsildar had come out with a clear-cut case that the said cart tack is left for usage of the general public, then, by no stretch of imagination, the petitioner can claim any exclusive right over the said cart track.”

10. The Learned Counsel appearing for the 4th respondent vehemently objected to the claim of the petitioner and submitted that the petitioner had encroached the pathway and vari.

11. The respondents 1 to 3 on one hand submitted that the land in S.No. 732/2 is cart track and on the other hand submitted that the land in 732/1 belongs to petitioner and also submitted that the petitioner had encroached the cart track. It is an admitted fact that the land in S.No.732/1 belongs to the petitioner. But the 4th respondent under the guise of public interest litigation had created more confusion. Hence in order to resolve the issue this Court had appointed Advocate Commissioner, who had visited the spot and had filed report.



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12. It is seen that the petitioner has encroached S.F.No.732/2 which is a cart track. It is also seen that the respondents have laid road in the petitioner's patta land in SF No.732/1. The reason for laying the road is the petitioner's land is that the original cart track in S.F.No.732/2 is a low-lying area, therefore, the road could not be laid. Hence, the respondents decided to lay the thar road in the petitioner's patta land which is shown as blue in the sketch filed by the Advocate Commissioner and the sketch is annexed hereunder. In short, the government has encroached the petitioner's patta land and in turn the petitioner has encroached the cart track. Therefore, on ground and in reality, there is a change in usage over a period of time.



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13. As stated earlier the 4th respondent submitted that the petitioner had encroached the pathway and vari. But even as per the “A” register, which is produced by the 4th respondent, the S.No.732/1 belongs to private individual, S.No.732/2 is shown as “vandipadhai”, S.No.732/3 belongs to private individual and S.No.732/4 is “vaikal”. Hence the public interest litigation is filed without any basis. This Court is bound to record the fact that it is dangerous to summarily reject the claim of the individuals under the guise of encroachment and under the guise of an order passed in public interest litigation. This Court also records the attitude of the 4th respondent who was interfering and blocking the Court to know the real facts and was submitting that the Court need not go into the facts since it has been already declared the petitioner had encroached. But the true facts are that over a period of time and based on low lying of land the road and portion of patta land were exchanged.

14. The learned Counsel appearing for the petitioner relied on the Board Standing Order No.26-A and submitted that the government has power to exchange the government land with private land. Under Clause 1, it is stated that whenever there is a change of land in due course of time, the same shall be exchanged. The relevant portion is extracted hereunder:



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“1. When exchange may be made.-The grant of land, at the disposal of the Government for land owned privately may be made in circumstances such as the following:

(1) Where a river, waterway, cart-track, etc., has changed its course through a private holding, the owner is willing to relinquish the land covered by the actual course in exchange for the portion registered in the accounts as river, etc.,

(ii) for straightening the course of a channel, pathway, etc., or where a channel, pathway, etc., splits up a holding into two and it can be diverted along the boundary of the holding without any inconvenience to the public.

(iii) where it is desirable to prohibit any cultivation in the bed of an irrigation tank or river and the private owner is willing to relinquish the land situated in such bed in exchange for land at the disposal of the Government,

(iv) where small extents of private land not exceeding 25 cents in each case are required for public purposes such as minor improvements in irrigation sources or construction of chavadies, cattle-pounds, wells or schools;

Note. If any permanent structure is to be built on the land required it must invariably be required whatever the extent of the land or its cost may be.

G.O.Ms.2853, Rev., d. 19-9-39.

B.P.Press 18, d. 15-3-39.

(v) where by an act of the Government, a private holding or any portion



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thereof has been rendered valueless or has been diminished in value and the private owner is willing to take land at the disposal of the Government in exchange for such holding or portion, as the case may be.

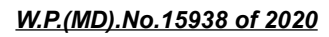
(vi) where a private owner is willing to provide land for the extension of village sites in exchange for land at the disposal of the Government;

(vii) where a private owner is willing to relinquish small extents of land not exceeding 25 cents in each case for the consolidation of his holding.

2. Mode of exchange.- Such exchange should take the form of a relinquishment of the land privately owned and of an assignment subject to the usual conditions of the land at the disposal of the Government.”

15. In such circumstances, the Government has power to invoke Board Standing Order 26-A(1) and accept the exchange of land. The petitioner has also erected a well as well as construction in 732/2, if the lands are exchanged then the same need not removed. Likewise, the Thar Road laid by the respondents also need not be removed if the lands are exchanged. Since on exchange, the said place will be handed over the petitioner, the thar road which is already laid in the petitioner's road shall continue there itself.

16. Therefore the respondents are directed to invoke Board Standing Order 26-A(1) and exchange the land. After exchange, the official respondents



17. With the above said observation, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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

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- 1.The Regional Transport Officer and
Licensing Authority,
Office of the Regional Transport Office,
Transport Department,
Madurai North, Madurai District.
- 2.The Motor Vehicle Inspector,
Unit Office,
The Office of Regional Transport Officer,
Transport Department,
Melur, Madurai District.
- 3.The Inspector of Police,
Melur Taluk Police Station,
Melur, Madurai District.
(In Crime No.494 of 2023)



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S.SRIMATHY, J.

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