



W.P(MD)No.21206 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.09.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.21206 of 2014

and

M.P(MD)Nos.1 of 2014 & 1 of 2015

S.T.Ponnaiah

... Petitioner

Vs

1.The District Collector,
Tuticorin District,
Tuticorin.

2.The Block Development Officer,
(Village Panchayats),
Allwarthirunagari Panchayat Union,
Thenthiruperai,
Thenthiruperai Post,
Tuticorin District.

3.The Tahsildar,
Sathankulam Taluk,
Tuticorin.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for records relating to the Impugned Proceedings No. VooNi7/5842/2009 dated 06.08.2013 passed by the first respondent and quash the same as illegal and consequently directing



W.P(MD)No.21206 of 2014

the respondents to remove the road laid in the petitioner land in Survey No. 81/6 and Survey No. 77/10 in Meerankulam II Village, Sathankulam Taluk, Tuticorin District.

For Petitioner : Mr.M.P.Senthil

For Respondents : Mr.M.Siddharthan
Additional Government Pleader
for R.1 & R.3

Mr.J.Gunaseelan Muthaiah for R.2

ORDER

Heard both sides.

2. The petitioner alleges that on his patta land a road was illegally laid in the year 2004. The petitioner therefore filed W.P(MD)No.4444 of 2008 for directing the respondents to remove the same. The writ petition was disposed of on 08.01.2013 in the following terms:

“2.The case of the petitioner is that he is the owner of the lands at S.Nos.81/6 and 7/10, Meerankulam II Village, Sathankulam Taluk. The revenue records also carry the name of the petitioner, as the owner of the land and he is in possession of the same. During the month of December 2007, the 2nd respondent laid a metal road encroaching upon the petitioners land at S.Nos.81/6 and 77/10 without obtaining



W.P(MD)No.21206 of 2014

WEB COPY

prior permission or without following any due process of law. Therefore, the petitioner made a representation on 31.12.2007 to the first respondent with a request to remove the metal road. The 2nd respondent inspected the spot and assured the petitioner that they would remove the road laid on the petitioner's land. However, no steps were taken so far to remove the said road. Therefore, the present writ petition is filed.

3. It is the claim of the petitioner that metal road was laid by the 2nd respondent in the part of his land at S.Nos.81/6 and 7/10, without following any due process of law. At any event, the petitioner had already approached the first respondent by way of his representation dated 31.12.2007, seeking for removal of the said metal road. Therefore, it is for the first respondent to consider the said representation and pass orders on the same in accordance with law.

4. Therefore, without going into the merits and other claim made by the petitioner, I only direct the first respondent to consider the representation of the petitioner, dated 31.12.2007 and pass orders on the same on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order.”

Pursuant to the said direction, the District Collector, Thoothukudi passed impugned proceedings dated 06.08.2013 rejecting the petitioner's request and clarifying that while the general public can continue to use the road, the



W.P(MD)No.21206 of 2014

character of the land as the petitioner's patta land will not be affected.

Challenging the same, the present writ petition came to be filed.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petitioner and called upon this Court to grant relief as prayed for.

4. The respondents have filed counter affidavit and the learned Additional Government Pleader took me through its contents. He submitted that no case for interference has been made out.

5. I carefully considered the rival contentions and went through the materials on record.

6. I must endorse the stand of the learned counsel appearing for the petitioner that in matters such as this limitation cannot be put against the petitioner. The decisions reported in **(2013) 3 CTC 222 (Tukaram Kana Joshi & Others Vs Maharashtra Industrial Development Corporation)** and **(2022) 7**



W.P(MD)No.21206 of 2014

SCC 508 (Sukh Dutt Ratra & Another Vs The State of Himachal Pradesh &

Others) are very much in favour of the petitioner herein. There is again no dispute that the patta in respect of the petition mentioned lands are in the name of the petitioner. Probably that is why the District Collector, Thoothukudi even while rejecting the petitioner's request observed that the character of the land as that of the petitioner will not be affected. I fail to understand what this remark means.

7. But I am not in a position to grant relief in this writ petition only for the reason that disputed questions of fact are involved. The respondents have taken the stand for over 30 years, the road in question was used as a pathway by the members of the general public and that only on what can be called as Nilaviyal Pathai, the thar road was laid under Central Government Scheme in the year 2004. The moot question is whether a road was formed for the first time in the year 2004 or whether it was laid on an existing public pathway. If the road was formed for the first time in the year 2004, the petitioner has to be granted relief. There can be no two questions about it. If a public pathway was already in existence or a pathway which was used by a public was there already, the respondents cannot be faulted. This is a question of fact. Evidence will have to be adduced. Even while not interfering with the impugned order, I do



W.P(MD)No.21206 of 2014

not sustain the same. The petitioner is given liberty to move the jurisdictional civil Court for appropriate relief. If any such suit is filed within a period of eight weeks from the date of receipt of a copy of this order, limitation will not be an issue. The respondents herein shall not be permitted to raise limitation as a bar. The issue will have to be thrashed out on merits. If the respondents succeed in satisfying the trial Court that the public pathway was already in existence even prior to 2004, the suit will be dismissed. If the petitioner is able to show that there was no such public pathway and that road was laid for first time only in the year 2004, the suit will have to be decreed. I make it clear that I have not gone into the merits of the matter. If any such suit is filed within a period of eight weeks as mentioned above, the trial Court shall dispose of the same on merits and in accordance with law within a period of eight months thereafter.

8. This writ petition is disposed of accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

22.09.2023

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



W.P(MD)No.21206 of 2014

To

WEB COPY

- 1.The District Collector,
Tuticorin District,
Tuticorin.
- 2.The Block Development Officer,
(Village Panchayats),
Allwarthirunagari Panchayat Union,
Thenthiruperai,
Thenthiruperai Post,
Tuticorin District.
- 3.The Tahsildar,
Sathankulam Taluk,
Tuticorin.



WEB COPY



W.P(MD)No.21206 of 2014

G.R.SWAMINATHAN, J.

MGA

W.P(MD)No.21206 of 2014
and
M.P(MD)Nos.1 of 2014 & 1 of 2015

22.09.2023