



W.P(MD)No.18920 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.08.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.18920 of 2015

and

M.P(MD)No.1 of 2015

1.P.Chandra
2.A.Sivakumar Paramasivam
3.Manikandan Paramasivam
4.Bama Karunanithi
*(P.2 to P.4 are suo motu impleaded
vide order of this Court dated 28.07.2023)*

... Petitioners

Vs

1.The District Collector,
Thanjavur.

2.The Commissioner,
Thanjavur Panchayat Union,
Thanjavur.

3.The Tahsildar,
Thanjavur Taluk,
Thanjavur.

4.The President,
Marungulam Village,
Thanjavur District.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, forbearing the respondents herein from interfering with petitioner peaceful possession and enjoyment of the petitioner in S.Survey Nos.156/12B admeasuring 0.93.00 Hecs, S.No.156/11A & 11B measuring 0.22.5 and 0.20.0 Hecs and S.Nos.156/11A, 11B and 12B situated in Marungulam village, Thanjavur District.

For Petitioners : Mr.S.Ram Sundar Vijayraj

For Respondents : Mrs.K.Christy Theboral
Additional Government Pleader

Mr.H.Lakshmi Shankar
Amicus Curiae

ORDER

The writ petitioners are having lands in Marungulam Village, Thanjavur District in Survey Nos.156/12B, 156/11A and 156/11B. The lands were purchased through registered sale deeds dated 18.07.2012 and 03.09.2015. The petitioners concede that a piece of land in Survey No.156/12A has been used as a burial ground though not classified as such in the records. The local body attempted to put up a pucca thar road across the petitioners patta land. This writ petition came to be filed for restraining the respondents from doing so.



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

3. The respondents have filed a detailed counter affidavit and the learned Additional Government Pleader took me through its contents. The stand of the respondents is that through the petitioners' patta land "Nilaviyal Pathai" has been running across and pucca thar road is proposed to be laid only on this Nilaviyal Pathai. The respondents point out that Survey No.156/12A has been recorded as "Nilaviyal Mayanam" during UDR. The claim of the petitioners is that there is an alternative pathway to reach the mayanam is denied. The respondents insist that only through the petitioners patta land, burial ground can be accessed. Another objection taken in the counter affidavit is that the petitioners could have only approached the jurisdictional civil Court for relief and that the writ petition is not maintainable. The respondents pressed for dismissal of the writ petition.

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



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5. I appointed Mr.H.Lakshmi Shankar as Amicus Curiae to assist the Court with regard to the description of a piece of land as “Nilaviyal Pathai”. The learned Amicus Curiae placed all the relevant decisions on subject. He has also filed a detailed written note. I place on record my appreciation for his excellent assistance.

6. Even if in the A-Register, the land has been shown as “Nilaviyal Pathai”, that would not by itself be determinated. One can always go before the civil Court and get a declaration that it is not so. But the question that arises for consideration is what would be the implication so long as the land has been classified as “Nilaviyal Pathai” in the revenue record. It is not necessary that the description should be only in the “A” Register. At times in the FMB a detail mark can also indicate the existence of a “Nilaviyal Pathai”. RSO 26.15 states that a plan mark to channel or pathway running to patta land is a Government land. The Hon'ble Division Bench vide order dated 06.02.2018 in W.P.No.30187 of 2017 (*S.P.Rajamani Vs The State of Tamil Nadu & Others*) had also specifically referred to the aforesaid RSO. The Hon'ble Division Bench in the decision rendered in *2018 (1) CWC 529 (J.Jagadesh Vs The Tahsildar, Modakurichi Taluk & another)* had held as follows:



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“12. At this juncture, it would be relevant to refer Revenue Standing Order 26(15) which reads thus:

“15. Encroachments on plan-marked details:-- A plan-marked channel or pathway running in a patta land is a Government land. Eviction of encroachment in such lands need be invoked only in cases where the encroacher has interfered with the plan marked detail so as to close its entrance to and exit from his lands. In the case of pathways and cart tracks which have been used by the public till recently, the ryot should not be allowed to shift the course of the details to suit his own convenience. However, such diversions of plan marked channel from its original course, with a view to consolidate his holding or to facilitate irrigation of the portions which would be otherwise severed need not be treated as encroachment.”

13. A plain reading of the aforesaid provision shows that a plan marked pathway running in a patta land is a Government land and if any encroacher has interfered with the plan marked detail so as to close its entrance to and exit from his lands, an eviction can be ordered. So, in view of the aforesaid Revenue Standing Order even though the subject matter of the cart track is running in a patta land, it should be treated as a Government land. Admittedly, the petitioner has blocked the said cart track by putting iron gate and compound wall and therefore, the first respondent has rightly passed the order to remove the said



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encroachment.

...

18. In the decision cited by the learned Special Government Pleader (i.e.,) ***N.M.Ganeshan Vs. The Commissioner, Sathyamangalam Municipality*** (supra) also it is clearly held in para -6 as follows:

“6. It is not disputed by the appellant that the land in question is classified in the revenue records as “Nilaviyal Chandu” and it meant for general public for their use as a public street. The respondent Municipality is one of the wings of the Government and is empowered to protect the public lands from being encroached.”

So the aforesaid decision will squarely apply to the facts of this case.”

Another Hon'ble Division Bench vide order dated 22.11.2022 in W.P.No.29115 of 2022 (***T.C.Muthusamy Vs The Principal Secretary & Others***) has also taken the same view.

7. The learned Amicus Curiae points out that a right of way through a patta land or a Government land can be claimed.

“ a. As an easement by prescription as per section 15 of the Indian Easements and License, Act and as an easement by



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grant or as an easement of necessity

b. As a customary easement by owners of lands/properties in a particular locality entitled to beneficial enjoyment of the servient property.

c. As a customary right based on residence or for special purposes and such a right, not being an easement, referable to any immovable property of his or her own. This customary right may exist in favour of group of the general public at large. Such a right may exist in gross. The right of way to a pond, common well, burial ground or cemetery, can be of this sort.”

The Hon'ble Full Bench of the Calcutta High Court in a decision reported in ***1888 ILR 15 CAL 460 (Ram Kishen Sahu Vs Chunilal)*** also recognized three classes of rights. It held as follows:

“4. It is unnecessary to enquire whether the mode of acquiring each of these classes of rights is necessarily the same in all cases in England and in India. But it is, I think, important to remember that these three classes of rights exist in the one country as well as in the other. The first class, strictly private rights, we are all familiar with. The third class, public rights are of frequent occurrence. The second class of rights belonging to a portion of the public are also to be found in India. They are expressly recognised by the Legislature in Section 42, Illustration A, and Section 54, Illustration P, of the Specific Relief Act. It is specially important that this class of



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rights should be clearly understood and borne in mind in a country like India, where interests of the most essential importance depend so largely upon custom. And I am not sure that the existence of this class of rights has not sometimes been overlooked. I think there is reason to suspect that, in some cases, ways and other claims of a like nature have been treated as public rights, when perhaps they might have been both more correctly and more conveniently regarded as village ways and village rights; more correctly, because I think there is reason to suppose that such village roads as distinguished from public roads are of very common occurrence; more conveniently, because, as I shall show later, there may be more easy civil remedies for treating questions of village roads than questions relating to public roads.”

Coming to the case on hand, admittedly neither in the A-Register nor in the FMB nor in any other record, it has been stated that a Nilaviyal Pathai is running across the petitioner's patta land. In the cases mentioned above, the revenue record pointed to the existence of the Nilaviyal Pathai. That is not the case here. Therefore, the Mandamus sought for can very well be issued. But that would be subject to one vital exception. Admittedly, there is a burial ground in existence adjacent to the petitioner's land. The jurisdictional Tahsildhar has categorically stated that access to the said burial ground is through the petitioner's patta land. Photographs have been produced and I am



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satisfied that only through the petitioner's patta land, it is possible to reach the burial ground. It is also stated that burial ground is used only by few families.

While the general public may not have any right of way over the petitioners' patta land. As and when the families in question have to bury or cremate the dead bodies in the said burial ground, they can always take the dead body through the petitioner's patta land as was done traditionally and the petitioners cannot stop the same.

8. Subject to this, the writ petition is allowed accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

04.08.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
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G.R.SWAMINATHAN, J.

MGA

To

- 1.The District Collector,
Virudhunagar District,
Virudhunagar.
- 2.The Tahsildar,
Srivilliputhur Taluk,
Srivilliputhur,
Virudhunagar District.
- 3.The Head Surveyor,
O/o. The Tahsildar,
Srivilliputhur Taluk,
Srivilliputhur,
Virudhunagar District.

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