

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.08.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.4326 of 2015

and

M.P.(MD)No.1 of 2015

S.Devarajan

... Petitioner

Vs.

1.The Collector,
Tirunelveli District,
Tirunelveli.

2.The Sub Collector,
Office of the Sub Collector,
Cheranmahadevi,
Tirunelveli District.

3.The Revenue Divisional Officer,
Cheranmahadevi,
Tirunelveli District.

4.The Tahsildar,
Ambasamudram Taluk,
Tirunelveli District.

5.The Executive Officer,
Selection Grade Village Panchayat,
Cheranmahadevi,
Tirunelveli District.

... 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 second respondent's impugned order in Moo.Mu.1758-2015(A1), dated 16.03.2015 and quash the same as illegal and consequently directing the respondents to issue patt and cause correction in the village revenue records in Survey Nos.187 & 188, Cheranmahadevi Village, Ambasamudram Taluk, Tirunelveli District and include the name of the petitioner and other legal heirs of the petitioner's mother Packiathammal and consequently, the petitioner's name.

For Petitioner : Mr.M.Kannan

For Respondents : Mr.S.RA.Ramachandran
Additional Government Pleader for R1 to R5

ORDER

Heard the learned counsel on either side.

2. The petitioner's mother purchased the land comprised in Survey No. 719 in Cheranmahadevi in Ambasamudram Taluk. The land comprised in adjacent Survey numbers also belong to the petitioner's family. However, as per the revenue record, two pathways were shown running across the lands of the petitioner's family. Those pathways were comprised in Survey Nos.187 & 188. Since the said pathways were not of any use for the members of the general public, request was made to the local body for assigning the same in favour of the petitioner's mother. It appears that a resolution was passed by the

local body on 29.06.1970 for assigning the said pathway in favour of the petitioner's mother. It is also stated that pursuant to the said resolution, the District Collector passed an order under Section 86(3) of the Tamil Nadu Panchayats Act, 1958. The petitioner's mother passed away on 17.05.1982. Since formal mutations were not made in the village accounts, the petitioner applied to the Revenue Divisional Officer, Cheranmahadevi in the year 2014 for incorporating the name of the petitioner's mother in respect of the petition mentioned pathways. In the meanwhile, the complaint was made by a third party for restoration of the petition mentioned pathways. The Sub Collector, Cheranmahadevi conducted enquiry and passed the impugned order dated 16.03.2015 rejecting the petitioner's request. Challenging the said order, the present writ petition has been filed.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. He emphasized that the pathways in question are of no use to the general public because the starting as well as the terminal point end within the patta lands belonging to the petitioner. He 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. The learned Additional Government Pleader submitted that the impugned order is containing sound reasons and that it deserves to be sustained. He pressed for dismissal of the writ petition.

5. I carefully considered the rival contentions and went through the materials on record. It is true that the materials enclosed in the typed set of papers indicate some action in favour of the petitioner's mother under Section 86(3) of the Tamil Nadu Panchayats Act, 1958. Section 86(3) of the Act is as follows:-

“86(3). The Collector, after consulting the panchayat, may, by notification, exclude from the operation of this Act, any poramboke referred to in sub-section (2), and may also modify or cancel such notification.”

I fail to understand as to how the aforesaid provision can come to the aid of the petitioner. The learned counsel for the petitioner thereupon submitted that there appears to have been misquoting of the provision and that the relevant provision is Section 76(2) of the Act. Section 76(2) of the Act is as follows:-

“(2) The Government may, by notification, exclude from the operation of this Act any such public road, drain, drainage work, tunnel or culvert, and may also modify or cancel such notification.”

The related provision in the Revenue Standing Order 26(11) is as follows:-

11.Road and Streets which do not vest in a local board or municipality:-

The charge of roads or streets which do not vest in a local board or municipality and of lands classed as road or path proamboke which lie beyond the recognized limits, or beyond what the Collector may determine to be the reasonable limits of a public road or street vested in a local board or municipality, devolves upon the revenue authorities of the district, whose duty it is to suppress unauthorised occupation thereof, when objectionable. In dealing with such lands all possible future necessities, whether of Government or of the public should be kept sedulously in view. The existing settlement registration of such public roads as poramboke should not however be changed by the Collector without giving the local body concerned an opportunity of showing cause why such change should not be made.

6. Reliance is also placed on the decision of the Madras High Court reported in ***(1998) II MLJ 15 (Gopinath Vs. District Revenue Officer)***. In the said case, the petitioners applied for assignment of land which was in their possession for about 25 years. Their request was accepted by the District Revenue Officer as well as the District Collector. But the directions were not implemented. Later, the jurisdictional Tahsildar has assigned some other land. The High Court held that the right that has accrued of the writ petitioner pursuant to the earlier directions of the authorities cannot be taken away or denied. The said decision is clearly distinguishable on facts. In this case, no definite right has accrued as such in favour of the petitioner. There is nothing

on record to show that there has been reclassification of the land and assignment of the land in favour of the petitioner. What has been enclosed in the typed set of papers is only a recommendatory resolution passed by the local body and file noting. RSO 26(11) will also not come to the petitioner's rescue. If a land classified as road or poramboke does not vest with the panchayat, it is for the revenue department to protect the same from the encroachment. In any event, what has been classified as road will have to be maintained as such, unless there is some compelling public interest. In this case, absolutely, there is no public interest. Therefore, the order impugned in the writ petition does not call for interference.

7. The Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

28.08.2023

Index : Yes / No
Internet : Yes/ No
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