



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.08.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.21574 of 2016

Anbunesan

... Petitioner

Vs.

1. The District Collector,
Sivagangai District.
2. The District Revenue Officer,
Sivagangai District, Sivagangai.
3. The Commissioner cum
Block Development Officer,
Sivagangai.
4. The Divisional Engineer(Highways),
Sivagangai.
5. The Assistant Engineer,
Sivagangai Panchayat Union,
Sivagangai.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the impugned order passed by the 1st respondent in C1/19783/2014, dated 29.11.2014 and quash the same and consequently direct the respondents to pay compensation at the market value prevailing as on today with interest for the land of the petitioner measuring 79 cents 31



sq.ft. or 3200 sq.mts. in S.No.93/2B, Paiyur Pillaivayal Revenue Village, Sivagangai Taluk, Sivagangai District, which was forcibly occupied by the respondent by trespassing and laid road.

(Prayer is amended vide Order dated 18.07.2023 in WMP(MD). No.13459 of 2023)

For Petitioner : Mr.D.P.Sundar Raj

For Respondents : Mr.N.Satheesh Kumar,
Additional Government Pleader.

* * *

ORDER

Heard the learned counsel on either side.

2. The case of the petitioner is as follows:-

The property comprised in old survey No.93/2 measuring 3.47 acres in Paiyur Pillaivayal Village, Sivagangai Taluk was purchased by the petitioner's grandfather Periya Karuppa Pandithar on 04.01.1939 vide a registered document. Ryotwari patta was issued in his favour. The property devolved on the petitioner's father. The petitioner's father was a freedom fighter. He passed away in the year 2009. Since the petitioner was employed in Belgaum in the State of Karnataka, the entire



family was living in Belgaum since 1980. Only in the year 2005, they settled down in their native district at Sivagangai.

The stand of the petitioner is that when he visited the property, he was surprised to find that a tar road has been laid across his patta land. The road links Sivagangai with Panangadi Village. The petitioner and his father submitted representations seeking compensation for the illegal encroachment committed by the State. Since the representation did not yield any response, the petitioner filed W.P.(MD)No.19669 of 2013. It was disposed of on 04.12.2013 with a direction to the District Collector, Sivagangai to pass appropriate order on the said representation. Pursuant to the said direction, the impugned order came to be passed rejecting the petitioner's request. Challenging the same, this writ petition has been filed.

3. The learned counsel appearing for the writ petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. He drew my attention to the settlement order dated 05.08.1967 passed by the Additional Settlement Officer, Madurai directing issuance of Ryotwari



patta in the name of his father for survey No.93/2 (3.47 acres in Paiyur Pillaivayal Village). The learned counsel was at pains to point out that an order passed by the authority under the Settlement laws has the character of finality until it is set aside by the jurisdictional civil Court. In this case, till date the order dated 05.08.1967 has not been stayed or set aside and it is very much holding the field. According to the petitioner's counsel, the rights of the petitioner must be tested with reference to the aforesaid proceedings. Once it was conceded that the entire 3.47 acres in survey No.93/2 in Paiyur Pillaivayal Village is treated as patta land, the authority ought to be directed to pay compensation for having laid the road across the same without the consent of the petitioner's father. It is of course open to the Government to acquire a private land provided it is for public purpose and compensation is paid. In this case, no acquisition proceedings had taken place and no compensation was paid. It is true that the road was laid quite some time back. But on the ground that the petitioner had belatedly approached the Court, relief cannot be denied. The learned counsel relied on a catena of decisions in this regard; 2005-3-L.W.160 (State of U.P. and Others V. Manohar),



AIR 2022 SC 2073 (Kalyani V. Sulthan Bathery Municipality),

(2015) 6 SCC 406 (Pradyumna Mukund Kokil V. State of Maharashtra), 2015 (4) CTC 25 (The Commissioner, Bhavani Municipality V. C.Ramasamy (deceased)). He would also argue that even if in the revenue record, an entry has been made as if a road is existing (Boosthithi road or Nilaviyal pathai), that still cannot make any reference. The contention of the learned counsel appearing for the petitioner is that though the right to property may have ceased to be a fundamental right, it is still recognised under Article 300A of the Constitution of India. He insisted that the impugned order has to be set aside and compensation paid. He called upon this Court to allow the writ petition as prayed for.

4. The third respondent has filed counter affidavit and the learned Additional Government Pleader took me through its contents. The objection raised by the respondents is that the petition deserves to be dismissed on the ground of laches. They also argued that even when the petitioner's father was issued with patta, the road in question was in existence. The learned Additional Government Pleader pointedly drew my



attention to the sketch drawn on the reverse side of the petitioner's father's patta. This was issued in the year 1986.

The patta was issued in favour of Muthalagu, father of the petitioner, reflected the existence of the petition-mentioned road. The petitioner cannot now make any complaint. It was further submitted that earlier the land comprised in survey No.93/2 was shown as unassessed and that FMB prepared at the time of re-settlement also indicated the existence of the petition-mentioned pathway. Heavy reliance was placed on RSO No.26(15) and a decision of the Hon'ble Division Bench and also an unreported decision rendered in W.P. No.18876 of 2020 dated 22.04.2021. The learned Additional Government Pleader strongly pressed for dismissal of the writ petition.

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

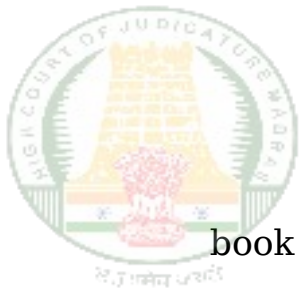
6. It is not in dispute that the authorities constituted under the Settlement laws directed issuance of patta in favour of the petitioner's father Muthalagu. The request was originally negatived. The petitioner's father filed revision



petition before the Director of Settlements who vide order dated 31.03.1967 remanded his claim to the Assistant Settlement Officer, Madurai for fresh enquiry and disposal. Thereupon, the Additional Settlement Officer, Madurai passed the order 05.08.1967 in favour of the petitioner's father.

7. On a careful reading of the order dated 31.03.1967, one can notice that there is a reference to “ Allur pathai”. Of course the said road was said to be the southern boundary of survey No.93/2. I wanted the learned Additional Government Pleader to make a statement as to whether the said Allur pathai is presently running. The official instructing the learned Additional Government Pleader informed the Court that Allur is the name of a village next to Panangadi Village and that the road now called “Panangadi-Sivagangai road” was originally called as “Allur pathai”. Of course, this is the statement made across the bar and it is not backed by any affidavit.

8. In the counter affidavit filed by the third respondent, it has been mentioned that a perusal of the field measurement



book compiled at the time of resettlement in the year 1979 and the filed map printed in the year 1961 clearly brought out the existence of a path way. Therefore, the statement that the present Panangadi-Sivagangai pathway was originally known as Allur pathai stands probalised.

9. The petitioner has enclosed a copy of the patta issued in favour of his father way back on 30.12.1985. The said patta is enclosed with sketch. From the sketch itself, it is seen that survey No.93/2 has been sub-divided into survey Nos.93/2A, 93/2B and 93/2C. The road which is now characterised as encroachment by the petitioner is comprised in survey No.93/2B. The only question that calls for consideration is whether the petitioner has to be paid compensation for laying the road across the land comprised in survey No.93/2B. It is beyond dispute that the road comprised in survey No.93/2B does not in isolation. It is a part of a road that is known as “Panangadi-Sivagangai Road”. RSO No.26(15) is as follows:-

“ Encroachment on plan-marked details:-

A plan-marked channel or pathway running in a patta land is a Government land. Eviction of



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encroachments 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 exist 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.”

10. In the UDR also, survey No.93/2B is referred to as “Boosthithi road”. UDR merely reflects the then existing position. In other words, the ground reality is reflected in the form of an entry. If after 1985, a road has been laid across the petitioner's land, certainly the petitioner would be entitled to compensation. In the case laws relied on by the petitioner's counsel, it was held that laches cannot be put against the claimant. But where a tar road has been laid on an existing



pathway in Paiyur Pillaivayal village, the question of paying compensation will not arise. Vide order dated 22.04.2021 made in W.P.No.18876 of 2020 (K.M.Murugesan V. The District Collector), a learned Judge of this Court had held as follows:-

“ 7. Admittedly, as on date, the land has been classified as "Nilaviyal Padhai". Once the land is classified as "Nilaviyal Padhai" , the land should be treated as a Government Land and the public are entitled to use the same. A Division Bench of this Court in the case J. Jegadhish /vs/ Tahsildar, Modakurichi Taluk, Erode District & others in W.P.No.27153 of 2016, dated 25.01.2018 has held that any land which is classified as "Pathway" running through patta land should be treated as a Government land, which reads as follows :-

"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



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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 encroachment."

8. In the said circumstances, as the land is classified as "Nilaviyal Pathai", the petitioner cannot claim any right over the property or seek for any compensation. Hence, I find no merit in the writ petition and the writ petition is liable to be dismissed.

11. What clinches the issue against the petitioner is his own conduct. The petitioner's grandfather had purchased 3 acres and 47 cents of land through a registered sale deed. It



was inherited by his father and thereafter by the petitioner.

Out of 3 acres and 47 cents, 80 cents had gone towards the formation of road. The petitioner is not a loser. It is seen from the photographs that a tar road has now been laid. As a result, the petitioner's land value has appreciated. The petitioner had also approached the Deputy Director of Town and Country Planning, Sivagangai seeking layout approval. Approval had been granted on 24.12.2018. The petition-mentioned tar road which is characterised as an encroachment by the petitioner was relied on in the layout approval application. The petitioner had taken advantage of the formation of the road. It is not open to the petitioner to seek compensation. The principle of estoppel would definitely come in the way. The petitioner's case has to be negatived for the following reasons:-

a) The materials on record clearly indicate that the pathway was in existence in survey No.93/2 even in the year 1967.

b) The road has been laid only on an existing pathway (nilaviyal pathai or Boosthithi road).

c) Patta issued in favour of the petitioner's father in the year 1985 also indicates the existence of the road.



d) Layout approval was obtained by showing the petition-mentioned road.

The petitioner is not entitled to the relief sought for in the writ petition. The order impugned in the writ petition is sustained. This writ petition stands dismissed. No costs.

17.08.2023

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

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Sivagangai District.
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G.R.SWAMINATHAN,J.

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