



W.P. No. 18228 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2024

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 18228 of 2023

M.Varadhan

... Petitioner

-VS-

1. The District Collector,
Kanchipuram District.
2. The Block Development Officer,
Walajabad,
Kanchipuram District.
3. The Panchayat President,
Arpakkam Village,
Walajabad,
Kanchipuram District.
4. The Block Development Officer,
Kancheepuram,
Kancheepuram District.
(R4 is *suo motu* impleaded vide
order dated 21.06.2023)
5. The Tahsildar,
Walajabad Taluk,
Kancheepuram District.
(R5 is *suo motu* impleaded vide
order dated 18.01.2024)

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, directing the Respondents to remove the cement road laid in the Petitioner's patta land property for the extent of 11 cents the total extents of 29½ in Survey No. 564/3.



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For Petitioner : Mr. A.Vivekanandhan
For Respondents : Mr. S.Prabhakaran,
Government Advocate (for R1, R2 & R5)
Mr. S.Ravikumar (for R3 & R4)

ORDER

Heard Mr. A.Vivekanandhan, Learned Counsel for the Petitioner, Mr. S.Prabahakaran, Learned Government Advocate appearing for the First, Second and Fifth Respondents and Mr. S.Ravikumar, Learned Counsel for the Third and Fourth Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The grievance ventilated by the Petitioner is that he has made a representation dated 22.10.2022 that the Second and Third Respondents without any authority of law are high-handedly laying down the cement road in his private land measuring an extent of 29 ½ cents in Survey No. 564/3 in Aarapakkam Village, Walajabad Taluk, Kanchipuram District.

3. The Third Respondent has filed Counter-Affidavit dated 20.07.2023 in which it has been stated as follows:-



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“3. I submit that the land in Survey No. 564/3 of No. 8 – Arpakkam Village, Walajabad Taluk, Kanchipuram District at about 11 cents have been used by the general public especially at about 25 families from the year 2003. While, the said land was in use as a mud road by the general public, the petitioner vendor S.T.Kalamegam purchased the property by sale deed dated 30.10.2007 at about 70 cents including the above said 11 cents of land used as road by the general public. Considering the use by the general public, the above said Kalamegam consented to lay a cement road. Right from the year 2007 the said 11 cents of land with cement road is under the use of the above general public.

4. I submit that the petitioner purchased the land measuring 24 cents and out of the 11 cents he purchased 5 ½ cents totally 29 ½ cents from the legal heirs of the above said Kalamegam, since deceased. The document's enclosed with the extract from FMB sketch of Survey No. 564 which revealed that there a separate mark indicating the road at about 11 cents. So, the petitioner knew about the existence of the cement road measuring about 11 cents. Having purchased as per the drawing attached to the sale deed, he approached the Tahsildar, Walajabad for issuance of patta. On 08.03.2023, the Taluk Surveyor in his Proceedings in OPT. No. 2022/0105/03/380547 dated 08.03.2023 found that out of the 70 cents in the above said Survey number, one Selvam and others purchased 35 cents



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with undivided half share in the 11 cents road on 03.12.2020.

The petitioner purchased remaining 24 cents and undivided half share in the 11 cents. He further found that the said undivided 11 cents is meant for the use of owners of the housing plots laid in Survey No. 497. While survey the land he further found that thought the sale deed states that land is 24 cents only 20 ½ cents is available as per the land survey.”

4. In that backdrop, this Court during the hearing on 18.01.2024 had required the Fifth Respondent to inspect the property along with surveyor to ascertain the ownership of the disputed portion of the land as reflected from the revenue records and submit a report in that regard.

5. In furtherance of that order, the Fifth Respondent has filed a memo on 04.03.2024, which reads as follows:-

“2. It is submit that the land in Survey Number 564/3 in Arpakkam Village of Walajabad Taluk as recorded in the updating registry scheme (UDR) mentioned as follows:-

<i>S.No.</i>	<i>Extent (hectare)</i>	<i>Classification</i>	<i>Patta No Pattadar name</i>
564/3	0.28.5	Punjai	281 Subramanian Mudilar



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In Tamil Nilam the Survey Number mentioned as follows:-

S.No.	Extent (hectare)	Classification	Patta No Pattadar name
564/3	0.28.5	Punjai	2795, Dharman son Kalamegam

The land in S. No. 564/3 Documents sold as follows:-

S.No.	Document No	Vendor	Purchaser	Extent
1.	5702/2020	Jayalakshmi (1) Manikandan (2) Bharath Kumar (3) Prema (4)	Selvam (1) Mani (2) Mohan (3) Manivanan (4)	35 cents and (5.5 cents out of 11 cents undivided portion)
2.		Jayalakshmi (1) Manikandan (2) Bharath Kumar (3) Prema (4)	Varadhan	24 cents and (5.5 cents out of 11 cents undivided portion)

3. I submit total extent 70 cents; 35 cents are registered in the name (1) Selvam S/o. Kuppan (2) Mani S/o. Kuppan (3) Mohan S/o. Kuppan (4) Manivannan S/o. Kuppan and undivided portion of 5.5 cents out of 11 cents.

The Petitioner registered 24 cents and undivided portion of 5.5 cents out of a 11 cents. So, totally 11 cents undivided portion that is used by the public "Babyammal Nagar". In such circumstances, the land was measured, with the help of revenue records, only 66.5 cents lands are available out of the original extent of 70 cents as mentioned in the village accounts. The undivided portion of the 11 cents has been used the public for more than 25 years. The Petitioner was aware of there facts before the



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documentation process.

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4. *The Selvam and others are used as a path, but the Petitioner Thiru. Varadhan to object the public used as a path. The boundaries are mentioned in the documents are as follows:-*

Document Number	North	South	East	West
5702/2020	Part of 564/3 same Survey Number	Part of 564/3 and 569	Survey Number 497	Survey Number 564/2b
115/2021		Part of 5648/3 and 569	Survey Number 497	Survey Number 564/2b

5. *According to the inspection, it has been found that there is no thar or concrete road in above mentioned land. Instead, there is only a sand road present, this implies that the path leading to the said land is not thar road or concrete road.*

6. *The documents mentioned above indicate that the four boundaries are the same. Therefore, Thiru. V.Varadhan, who purchased 5.5 cents, and Selvam and 3 others also purchased 5.5 cents together own 11 cents of the undivided portion.”*

6. It is evident from the rival contentions of the parties that it falls under the realm of disputed questions of fact, which cannot be effectively determined in the summary procedure followed under Article 226 of the Constitution. It must



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be recapitulated here that the Hon'ble Supreme Court of India in the decision in

Roshina T. -vs- Abdul Azeez K.T. [(2019) 2 SCC 329] has cautioned that such claims relating to property rights would have to be answered one way or the other only in a properly framed suit impleading necessary parties before the civil court.

7. In such circumstances, Learned Counsel for the Petitioner seeks permission of the Court to withdraw the Writ Petition with liberty to resort to the aforesaid procedure and he has made an endorsement to that effect in the court record.

In the result, the Writ Petition is dismissed as withdrawn granting such liberty. Though obvious, it is made clear that no view has been expressed by the Court on the merits of the controversy involved in the matter. Consequently, the connected Miscellaneous Petition is closed. No costs.

04.03.2024

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 01.04.2024.

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To

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P.D. AUDIKESAVALU, J.

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