



W.A.No.2902 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

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1.T.V.Amshalingam
2.D.Suresh Babu
3.S.Kirthiga
4.S.Parthiban
5.G.Rajesh
6.G.Balaji

... Appellants

Vs.

1.District Collector, Thiruvallur,
Thiruvallur District.

2.Chembarambakkam Minor,
Panchayat represented by its President,
Chembarambakkam, Tiruvellore District.

3.Block Development Officer/Commissioner,
Poonamallee Panchayat Union,
Poonamallee, Tiruvellore District.

... Respondents



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Prayer:- Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 20.02.2024 in W.P.No.25454 of 2023 on the file of this Court.

For Appellants : Mr.G.Sankaran
Senior Counsel
for Mr.N.Krishna Kumar

For Respondents : Mr.A.Selvendran
Special Government Pleader

J U D G M E N T

(Judgment was delivered by **S.S. SUNDAR, J.**)

This Writ Appeal is directed against the order of the learned Single Judge dated 20.02.2024 in W.P.No.25454 of 2023 dismissing the writ petition filed by the appellants for issuing a Writ of Mandamus forbearing the respondents or anybody claiming through them from in any way interfering with the peaceful possession and enjoyment of writ petitioners' land comprised in S.No.146/5, 146/6, 146/7, 146/16, 236/1, 236/2C and 236/2D, 236/2, 236/2F and 236/5, situated in Chembarambakkam Village, Thiruvallur District, without due process of law, to form or attempt to form a pathway in the middle of petitioners' lands to the graveyard situated in S.No.271/2 in Chembarambakkam Village, Thiruvallur District.



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2.It is admitted that some of the appellants have earlier filed writ petitions, in W.P.Nos.6915, 6916 and 6917 of 2022, in respect of lands in S.Nos.146/7, 146/16, 236/1, 236/2C, 236/2D, 236/2E and 236/2F and in S.Nos.271/2 and 146/5 in Chembarambakkam Village, for issuance of a Writ of Mandamus forbearing the official respondents from in any way interfering with the writ petitioners' peaceful possession and enjoyment of the lands comprised in the aforesaid Survey Fields in Chembarambakkam Village. This Court, taking note of the submissions made by the learned counsel appearing for the writ petitioners, disposed of the writ petitions by order dated 23.12.2011 in the following lines :

“8.As it has been assailed by the petitioners that they are the absolute owners of the land in question, which fact has not been denied by the respondents by filing counter affidavit, these writ petitions are disposed of by directing the respondents not to interfere with the possession and enjoyment of the petitioners' property without following due process of law. Consequently, connected miscellaneous petitions are closed. No costs.”



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3.It is pertinent to mention that the writ petitions were disposed of by the learned Single Judge without hearing the official respondents on merits.

This prompted the President of the Chembarambakkam Minor Panchayat to file an appeal as against the order in W.P.No.6915 of 2022, dated 23.12.2011. The appeal filed by the President of the Chembarambakkam Minor Panchayat was dismissed by the Division Bench of this Court, holding that the order of the learned Single Judge is no way affecting the right of the local body to evict the writ petitioners from the property if they are not having any right over the same.

4.Now, the appellants have come forward with the present writ petition in W.P.No.25454 of 2023 for similar relief. The learned Single Judge disposed of the writ petition giving liberty to the appellants to work out their remedy before the proper forum in the manner recognised by law. Aggrieved by the same, the appellants have preferred the above Writ Appeal.

5.It is the case of the appellants that the properties are private patta lands and that therefore, the official respondents cannot interfere with their



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exclusive title over the same. However, from the records, it is seen that the official respondents claim that there is a public pathway which is in existence and runs through the property of the appellants which is being enjoyed by the villagers to have access through the pathway to the graveyard in S.No.271/2 in Chembarambakkam Village.

6.The appellants have not even impleaded the persons who are actually using the alleged pathway which is in existence for the benefit of public. Even assuming for a moment that the appellants are owners of land, still existence of a pathway is possible and the existence of public pathway only recognises the right of easement in favour of public. Once the property is recognised as public pathway, it is open to the official respondents to take action, even if the right of public to have access through the public pathway is interfered with by the appellants. The learned Single Judge dismissed the writ petition giving liberty to the appellants to work out their remedies before the appropriate form in case they are aggrieved. Having regard to the overall circumstances and the facts that are brought to the notice of this Court, this Court cannot decide whether the appellants have an exclusive



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title to the property or whether a public pathway is in existence as claimed by the villagers or official respondents. As per the Survey Manual, the Revenue officials can also demarcate the public pathway in private land if it is being enjoyed. Only the Civil Court will be competent to decide the issue on the basis of Revenue records, FMB prepared before UDR, and the actual classification of the land. The appellants have approached this Court for reliefs which can be granted only by the Civil Court.

7.It is in these circumstances, giving liberty to the appellants to establish their exclusive title or ownership over the property in question before the appropriate forum in the manner known to law, this Writ Appeal is dismissed. No costs.

(S.S.S.R., J.) (A.D.M.C., J.)
21.10.2024

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Internet : Yes
Index : Yes
Neutral Citation : Yes

To

1.The District Collector, Thiruvallur,



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Thiruvallur District.

2. The President,
Chembarambakkam Minor Panchayat,
Chembarambakkam, Tiruvellore District.

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S.S. SUNDAR, J.
and
Dr.A.D. MARIA CLETE, J.



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