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W.P.No.18569 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2024

CORAM :

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.18569 of 2019
and W.M.P.No.17889 of 2019

R.Alaguvel

... Petitioner

Vs.

- 1.The District Collector,
Villupuram District.
Villupuram.
- 2.The District Revenue Officer,
Villupuram.
- 3.The Revenue Divisional Officer,
Kallakurichi,
Villupuram District.
- 4.The Tahsildar,
Taluk Office,
Chinna Salam,
Villupuram District.
- 5.Bodi Chettiar
- 6.Raman
- 7.P.Govindasamy
- 8.P.Sengodan
- 9.P.Rajendran



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10.Sakthivel

11.Dhavamani

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Mandamus directing the official respondents 1 to 4 to make necessary sub division for pathway (Nilaviyal Pathai) comprised in Survey No.221A/1B2 and 221A/17B of Royappanur Village, Chinna Selam Taluk, Villupuram District to enable the petitioner and others for free access of using the pathway.

For Petitioner : Mr.M.Muthappan

For Respondents 1 to 4 : Mr.Suresh.K.
Government Advocate

For Respondents 5 to 11 : Mr.M.Venkadeshan

ORDER

The petitioner has filed this petition seeking direction to the official respondents 1 to 4 to make necessary sub division for pathway (Nilaviyal Pathai) comprised in Survey No.221A/1B2 and 221A/17B of Royappanur Village, Chinna Selam Taluk, Villupuram District to enable the petitioner and others for free access of using the pathway.

2. The case of the petitioner is that the petitioner is holding the



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agricultural land comprised in S.No.215/5 in Patta No.1371 and S.No.221A/1B1 in Patta No.329 over an extent of 2 acres 70 cents. As per revenue records, there is a pathway (Nilaviyal Pathai) in S.No.221A/1B2 and S.No.221A/17B. The original owner of the said land was Mr.Palani, after his demise, the respondents 5 to 11 inherited the said land and objected to use the aforesaid path stating that they are the absolute owners of the property. Thus, the petitioner has made a representation dated 10.12.2018 before the first respondent to remove the encroachment of pathway by the respondents 5 to 11, which was forwarded to the fourth respondent for taking further action.

2.1. At this juncture, the respondents 5 to 11 tried to encroach the petitioner's land for forming pathway and in regard to the same, the petitioner made a police complaint against the respondents 5 to 11. Since, no action has been taken, the petitioner has filed a complaint before the Judicial Magistrate No.11, Kallakurichi, who in turn referred the matter to the police for investigation. Subsequently, the respondents 5 to 11 issued a legal notice dated 27.03.2019 alleging that the petitioner has encroached their lands and they have made a police complaint and moreover, they made a representation



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to the second respondent to rectify the mistake stating that their patta land is wrongly classified as “Nilaviyal Pathai” and also approached this Court to consider their representation by filing writ petition in W.P.No.5527 of 2019, which was ordered on 26.02.2019 and directed the second respondent therein to consider the same after giving fair opportunity of personal hearing to aggrieved persons, within a period of eight weeks from the date of receipt of a copy of the order. However, till date no such enquiry is commenced by the official respondents. Hence, the petitioner has come forward with the present writ petition.

3. When the matter was taken up for hearing learned counsel for the petitioner submitted that the Revenue Divisional Officer, Chinna Selam has issued a proceeding in Na.Ka.No.A6/116/2023 dated 04.07.2024 without conducting any enquiry or opportunity of hearing to the petitioner, which is in violation of principles of natural justice. Hence, he prayed this Court to set aside the aforesaid proceeding dated 04.07.2024.

4. Heard the learned counsel on either side and perused the materials



available on record.

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5. Since the issue relates to the same matter, this Court vide its order dated 02.07.2019 directed the fourth respondent to pass a comprehensive order by taking into account the claims of the petitioner as well as respondents 5 to 11 and file a report of the action taken on the said claims and adjourned the matter to 16.08.2019.

6. When the matter was taken up for hearing on 16.08.2019, it was found that the fourth respondent has not filed any report of the action taken despite the aforesaid order dated 02.07.2019. Hence, this Court directed the third respondent to appear in person before this Court on 23.10.2019 to show cause why contempt proceedings should not be initiated against him for non-compliance of the order dated 02.07.2019.

7. When the matter was listed for hearing on 13.06.2024, this Court directed the fourth respondent/Tahsildar, Chinna Salem Taluk, Kallakurichi District to appear in person before this Court along with an action taken report and adjourned the case to 19.06.2024.



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8. In compliance of the said order of this Court dated 13.06.2024, Thiru.J.Kamalakanna, Tahsildar, Chinna Selam Taluk, Kallakurichi District has appeared on 20.06.2024 and submitted that he has joined the said post only seven months back and the concerned person viz., Mrs.Indira, who was the then Tahsildar of Chinna Salem, Kallakurichi District, at the time of order passed by this Court i.e., on 26.02.2019 has been transferred and presently working as Tahsildar in the District Collectorate, Kallakurichi.

9. In view of the submission made by the fourth respondent, this Court directed Mrs.Indira, who was the then Tahsildar of Chinna Salem, Kallakurichi District to appear in person before this Court on 27.06.2024 at 10.30 A.M., along with a copy of the order based on the representation of the petitioner dated 10.12.2018 and adjourned the matter to 27.06.2024.

10. Pursuant to the order of this Court dated 20.06.2024, Mrs.Indira, Tahsildar (MHS), Collectorate Office, Kallakurichi has appeared before this Court on 27.06.2024 and she was directed to file an affidavit tendering



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apology. However, pending this writ petition, without giving any opportunity of hearing or enquiry, the fourth respondent has issued a proceeding in Na.Ka.No.A6/116/2023 dated 04.07.2024 and rejected the claim of the petitioner stating that the property in dispute is belongs to the respondents 5 to 11 and the petitioner has no right to claim the same as “Nilaviyal Pathai”.

11. In view of the above, the proceeding passed by the fourth respondent in Na.Ka.No.A6/116/2023, dated 04.07.2024 is liable to be set aside and the same is set aside. Since, Kallakurichi is bifurcated from Villupuram District, the village Chinna Salem comes under the Kallakurichi District. Hence, this Court remits the matter back to the Tahsildar, Taluk Office, Chinna Salem Taluk, Kallakurichi District for a fresh consideration after giving due notice to both parties, affording an opportunity of personal hearing to the petitioners as well as private respondents/interested parties if any, to take into consideration all the relevant documents submitted the parties in regard to the subject matter property and pass appropriate orders on merits, in accordance with law thereby following the above principles of



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natural justice within a period of eight weeks from the date of receipt of a copy of this order.

12. This writ petition is disposed of with the aforesaid observation and direction. No costs. Consequently, connected miscellaneous petition is also closed.

09.07.2024

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Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No

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Chinna Salem,
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Copy To:

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