



WEB COPY



W.P.No.22913 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.22913 of 2024

and

W.M.P.No.24955 of 2024

R.Krishnavel

... Petitioner

Vs.

1.The District Collector
Perambalur District

2.The Sub Collector
Office Of The Sub-Collector,
Perambalur, Permbalur District

3.The Tahsildhar
Kunnam Taluk, Permbalur District

4.Periyasamy

...Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus, calling upon the connected records pertaining to 2nd respondent proceedings in Na.Ka.A2 / 326 / 2024 dated 01.07.2024 and quash the same and consequently, forbearing the 4th respondent herein from entering into and putting up any



construction or fencing and preventing or interfering with the petitioners peaceful enjoyment of the cart track or common passage measuring an extent of 002.12 Ares of Land in S.No.541/31 of Sirumathur village Kunnam Taluk, Perambalur District in terms of judgement dated 23.06.2015 in S.A. No. 1560 of 2011 on the file of this Hon'ble Court.

For Petitioner : M/s.G.Periya Perumal

For Respondents : M/s.M.R.Gokul Krishnan, AGP
for R.1 to R.3.
: M/s.Thiageshwaran
for M/s.Waran & Sai Ram for R4

ORDER

The Writ Petition has been filed for the following reliefs:-

"Calling upon the connected records pertaining to 2nd respondent proceedings in Na.Ka.A2 / 326 / 2024 dated 01.07.2024 and quash the same and consequently, forbearing the 4th respondent herein from entering into and putting up any construction or fencing and preventing or interfering with the petitioners peaceful enjoyment of the cart track or common passage measuring an extent of 002.12 Ares of Land in S.No. 541/31 of Sirumathur village Kunnam Taluk, Perambalur District in terms of judgement



WEB COPY

W.P.No.22913 of 2024



dated 23.06.2015 in S.A. No.1560 of 2011 on the file of this

Hon'ble Court."

Brief facts:-

2. The land comprised is S.No.240 along with the other lands were purchased by the petitioner's father and one Ramasamy Nainar. In the year 1999 there was a partition between the two and the land comprised in S.No.240 was allotted to the petitioner's father Ramasamy.

3. There was a cart track/common passage running from the north to south which has been used as an ingress and egress to the petitioner's patta land in S.No.240. The land which has been used as a cart track/common passage has been classified as the Natham in the revenue records. This common passage is comprised in S.No.541/31. This common passage is used not only by the petitioner but also by the other villagers. To the east of the common passage there was a vacant land which has also been classified as Natham. The 4th respondent had illegally encroached upon some portion of the land and put up construction without the permission of the authorities. On the west of the common passage the 4th respondent had purchased a land in the name of his wife and in the schedule of the sale



deed, the said cart track is mentioned as a boundary on the eastern side.

WEB COPY

4. While so, the 4th respondent wanted to purchase the petitioner's land in S.No.240 which was denied by the petitioner's father. To arm twist the petitioner's father, the 4th respondent started preventing the use of the common passage. This constrained the petitioner's father to file a suit O.S.No.403/2004, on the file of the District Munsif Court, Perambalur against the 4th respondent for permanent injunction. This suit was contested by the 4th respondent stating that the land belonged to him which was being used for a cattle shed and for storing heap of paddy straw. The said suit O.S.No.403 of 2004 was decreed by judgement and decree dated 30.01.2010. Against the said judgement and decree, an appeal was preferred by the 4th respondent in A.S.No.34/2010, on the file of the Sub Court, Perambalur. The said appeal was dismissed. Against the concurrent judgement and decree the 4th respondent had filed S.A.No.1560 of 2011. The Second Appeal was also dismissed. By reason of the aforesaid judgement, the petitioner's right to use the common passage was confirmed.

5. While so, on 08.06.2024, the petitioner had received a summon



W.P.No.22913 of 2024

from the 2nd respondent calling upon the petitioner to appear before him for an enquiry on 10.06.2024 with reference to grant of patta in respect of the land measuring an extent of 02.12 ares in S.No.541/31, Sirmathur Nazira Namaiyur Village and to cancel the classification of cart track and grant of patta to the 4th respondent. On 10.06.2024, the petitioner had appeared before the 2nd respondent and objected the proposal of cancelling the classification of land as common passage or cart track with relevant records.

6. To the petitioner's shock and surprise the 2nd respondent had once again issued a summon dated 01.07.2024 calling upon the petitioner to appear for an enquiry on 08.07.2024. In response to the summon dated 01.07.2024, the petitioner had appeared before the 2nd respondent and filed his written objection.

7. The petitioner would submit that the 4th respondent who had lost before the Courts below is now trying to use the revenue authorities to claim a right to the cart track. Therefore, challenging the above notice dated 01.07.2024, the petitioner is before this Court.



8. Heard the counsels on either side and also perused the counter affidavit filed by the 4th respondent.

9. While dismissing the Second Appeal filed by the 4th respondent in S.A. No.1560/2021, this Court had observed as follows-

"The Lower Appellate Court, being the final fact finding court, had considered the document Ex. X.1, resolution passed by the panchayat. The evidence of D.W.4 Deputy Tahsildar, who was examined at the instance of the defendant, also had deposed that the suit property was sub-divided as common pathway as per Ex. A.6. Therefore, when there is a common pathway available, the appellant / defendant cannot compel the respondent/plaintiff to use the alternate pathway contending that it is an easement of necessity. Therefore, it can be easily said that there is an implied grant of easement over the suit property for the plaintiff."

10. The present stand taken by the 4th respondent in his counter appears to be an attempt to circumvent the findings of the Civil Court. The 4th respondent had suffered a judgement in and by which the right of the petitioner to the pathway has been clearly established. The 4th respondent cannot keep moving one application after another to try to establish a non



W.P.No.22913 of 2024

existent right to the property that is now been used as a pathway.

WEB COPY

11. In these circumstances the Writ Petition is allowed. The impugned notice dated 01.07.2024 is quashed. It is seen that the 4th respondent had subsequently filed a suit O.S.No.75 of 2024, pending on the file of the District Munsif, Kunnan after the dismissal of the earlier suit. Therefore, considering the above, no survey or subdivision of the subject property shall take place till the disposal of the suit O.S.No.75 of 2024. No costs. Consequently, the connected Miscellaneous Petition is closed.

25.11.2024

(shr)

Index : Yes/No

Speaking Order: Yes/No

Neutral Citation : Yes/No

To

1.The District Collector

Perambalur District

2.The Sub Collector

Office Of The Sub-Collector, Perambalur, Permbalur District

3.The Tahsildhar

Kunnam Taluk, Permbalur District



WEB COPY



W.P.No.22913 of 2024

P.T. ASHA. J.,

(shr)

W.P.No.22913 of 2024
and
W.M.P.No.24955 of 2024

25.11.2024