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W.P.No.29625 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.29625 of 2024 and
WMP.No.32278 of 2024

Muthusamy

... Petitioner

-Vs-

- 1.The District Collector,
Namakkal
- 2.The Project Director,
District Rural Development Agency,
Office of District Collectorate, Namakkal
- 3.The Block Development Officer,
Vennandur, Namakkal District
- 4.The President,
Moolakadu Panchayet,
Masakkalipatti Post, Rasipuram Taluk,
Namakkal District

... Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Mandamus forbearing the respondents or their men or agents from laying tar road over the petitioner's patta land comprised in SF.No.77/5A at Moolakadu Village, Rasipuram District, Namakkal by considering the representation of the petitioner dated 23.09.2024.

For Petitioner : Mr.R.Nalliyappan



W.P.No.29625 of 2024

For Respondents

For R1 & 2 : Mr.G.Jeyachandran,
Government Advocate

For R3 : M/s.M.Jayanthi,
Additional Government Pleader

For R4 : Mr.S.Sathishkumar

ORDER

This writ petition has been filed for direction forbearing the respondents from laying any tar road over the petitioner's patta land comprised in SF.No.77/5A situated at Moolakadu Village, Rasipuram, Namakkal District.

2. The petitioner owns patta land comprised in SF.No.77/5 situated at Moolakadu Village, Rasipuram, Namakkal District to an extent of 2.20 acres, which was purchased by him by the registered sale deed dated 23.11.1981 from one, Haridoss. While being so, one T.P.Sekar applied for sub division of the said property as per his sale deed. The Tahsildar, Rasipuram sub divided the property comprised in SF.No.77/5 as 77/A1 and 77/5A2. However, it was not done as per the sale deed of the petitioner as well as the said T.P.Sekar. He applied for sub division in order to convert the agricultural land to the residential



W.P.No.29625 of 2024

plots including a portion of the property belongs to the petitioner to an extent of 57 cents. Therefore, the petitioner filed suit in OS.No.158 of 2006 on the file of the District Munsif Court, Rasipuram. The civil court appointed advocate commissioner to measure the subject property belongs to the petitioner as well as the said T.P.Sekar. Thereafter, it came to know that the sub division of the subject property was not based on the respective sale deeds and it was only on the application submitted by the said T.P.Sekar. Therefore, the petitioner filed appeal and the Sub Collector by order dated 17.04.2012 allowed the application submitted by the petitioner and cancelled the sub division ordered by the Tahsildar, Rasipuram. Aggrieved by the same, writ petition was filed in WP.No.28771 of 2012 and this Court by order dated 27.10.2015, wherein this Court remanded the matter back to the Sub Collector for passing fresh order after giving opportunity of hearing to all.

3. Thereafter, the Revenue Divisional Officer had conducted detailed enquiry and cancelled the sub division. On re-survey of the property, it was found that the said T.P.Sekar had encroached a portion of the land belongs to the petitioner to an extent of 57 cents and



W.P.No.29625 of 2024

converted into house plots. Therefore, the petitioner filed another suit in OS.No.200 of 2008 on the file of the Sub Court, Rasipuram for declaration and permanent injunction and also mandatory injunction in respect of the property which was encroached by the said T.P.Sekar. The trial court decreed the suit by the judgment and decree dated 08.11.2017 in respect of the portion of land which was encroached by the said T.P.Sekar. Aggrieved by the same, appeal suit was filed in AS.No.32 of 2018 and the same was disposed of by the judgment and decree dated 28.11.2019 thereby modified the judgment and decree passed by the trial court and held that the petitioner is entitled for declaration and possession in respect of the property as per the sale deed dated 23.11.1981.

4. However, aggrieved by the same, no appeal has been filed and the same became final. Therefore, the petitioner filed execution petition in order to execute the judgment and decree and it is pending. While being so, the fourth respondent had taken steps to lay tar road in the said land belongs to the petitioner. Therefore, the petitioner approached this Court in WP.No.14479 of 2021 for direction forbearing



W.P.No.29625 of 2024

the respondents from laying any tar road over the unauthorised house plots existing in the petitioner's patta land comprised in survey No.77/5A situated at Moolakadu Village, Rasipuram Taluk. This Court by order dated 15.07.2021, directed the third respondent herein to conduct enquiry on the representation submitted by the petitioner and pass orders. The third respondent conducted enquiry and passed order on 26.11.2021 ordering to maintain status quo and stopped from laying any road in the subject property. Once again, the fourth respondent had taken coercive steps to lay road on the patta land belongs to the petitioner. Therefore, once again the petitioner submitted representation to the authorirites concerned and the same was not considered. Therefore, the petitioner was constrained to approach this Court in WP.No.28693 of 2023 for direction forbearing the respondents from laying any tar road.

5. While pending the writ petition, the respondents filed memo dated 06.10.2023 stating that on the objections raised by the petitioner, the respondents were directed to stop laying road. Subsequent to the direction issued by this Court, the respondents 3 and 4 stopped to lay tar road on the petitioner's land. However, while being so, the fourth



W.P.No.29625 of 2024

respondent filed writ petition before this Court in WP.No.19229 of 2024 for direction to the respondents to survey the land comprised in survey No.77/5 in new sub division No.77/5A in New Survey No.77/5A1 to an extent of 1 acre 70 cents situated at Moolakadu Village, Rasipuram, Namakkal District and to fix its boundaries of common passage road laid in plots as per the gift deed in document No.2435 of 2008 dated 27.05.2008. This Court by order dated 19.07.2024, directed the respondents to consider the application submitted by the fourth respondent and to conduct enquiry and pass orders for survey of the property and to demarcate the boundaries within a period of two months . However, in the said writ petition, the petitioner was not added as party.

6. Therefore, once again the petitioner filed writ petition in WP.No.24499 of 2024 for direction forbearing the respondents from surveying the property of the petitioner's patta land comprised in SF.No.77/5A situated at Moolakadu Village, Rasipuram, Namakkal District and this Court by an order dated 12.08.2024 once again ordered to maintain status quo in respect of the subject property. Thereafter, one, Periyasamy filed writ petition before this Court in the form of Public



W.P.No.29625 of 2024

Interest Litigation in WP.No.26757 of 2024 for direction to the respondents to implement the order passed by the first respondent dated 27.06.2023 to provide cement road in Moolakadu Panchayat in Amman Nagar, Sedhu Nagar Cross Streets and Masakalipatty Erangkadu Cross Street, Rasipuram, Namakkal District. The Hon'ble Division Bench of this Court directed the respondents to lay cement road in Moolakadu Panchayat in Amman Nagar, Sedhu Nagar Cross Streets and Masakalipatty Erangkadu Cross Street, Rasipuram, Namakkal District.

7. Thus, it is clear that the petitioner had purchased the property comprised in survey No.77/5 at Moolakadu Village, Rasipuram, Namakkal to an extent of 2.20 acres by the registered sale deed dated 23.11.1981 in which 57 cents of the property was encroached by one, T.P.Sekar. Thereafter, he subjected the encroached portion and also other property which was purchased by him for layout. As per the layout, the said T.P.Sekar had executed gift deed for rear portion in favour of the local body. Accordingly, it was sub divided as survey Nos.77/5A1 and 77/5A2. Aggrieved by the same, the petitioner filed suit and subsequently the Revenue Divisional Officer set aside the sub division



W.P.No.29625 of 2024

and the suit was also decreed in favour of the petitioner. Now execution petition is pending to recover the property which was originally encroached by the said T.P.Sekar to an extent of 57 cents comprised in SF.No.77/5. However, without considering the same, the third and fourth respondents herein are trying to lay road in the property which was gifted by the said T.P.Sekar. In fact, this Court in the earlier writ petition itself ordered status quo. All these facts were suppressed before the Hon'ble Division Bench of this Court in WP.No.26757 of 2024 and obtained order of direction by one S.Periasamy.

8. On instruction, the learned Additional Government Pleader appearing for the third respondent submitted that only on the northern side of the petitioner's property, road has been laid. Insofar as the petitioner's property comprised in survey No.77/5 to an extent of 2.20 acres situated at Moolakadu Village, Rasipuram District, Namakkal, no road has been laid and there is absolutely no disturbance by these respondents for peaceful possession and enjoyment by the petitioner.

9. In view of the above, the respondents are restrained from



W.P.No.29625 of 2024

laying any road on the petitioner's patta land comprised in SF.No.77/5 at Moolakadu Village, Rasipuram, Namakkal District to an extent of 2.20 acres. Insofar as the direction issued by this Court in WP.No.19229 of 2024 dated 19.07.2024, the Tahsildar, Rasipuram Taluk, Namakkal District is directed to survey the land comprised in old survey No.77/5 in new sub division No.77/5A in New Survey No.77/5A1 to an extent of 1 acre 70 cents situated at Moolakadu Village, Rasipuram Taluk, Namakkal District . However, in view of the interim order passed by this Court in WP.No.24499 of 2024 dtaed 22.08.2024, the respondents are directed to maintain status quo in respect of the subject property.

10. In view of the above directions, this writ petition stands disposed of. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

03.10.2024

Neutral citation: Yes/No
Index : Yes/No
Speaking/Non Speaking order
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W.P.No.29625 of 2024

G.K.ILANTHIRAIYAN. J,

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W.P.No.29625 of 2024

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