



W.P.No.27882 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**W.P.No.27882 of 2018
and W.M.P.Nos.32427 and 32430 of 2018**

S.Veerasamy

Vs.

... Petitioner

1. The District Collector,
Collectorate,
Namakkal.

2.The Revenue Divisional Officer,
Tiruchengode,
Namakkal District.

3.The Tahsildar,
Paramathi Velur Taluk,
Namakkal District.

4.K.S.Vivekananthan

5.A.Ramalingam

... Respondents



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PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the order in Na.Ka.No.4504/2017 dated 20.09.2018 passed by the third respondent which is entirely contrary to the judgment in O.S.No.446 of 2004 dated 10.11.2008 confirmed in A.S.No.114 of 2008 dated 27.10.2017 which was reiterated in Common judgment dated 12.06.2008 in W.P.No.2852 of 2012 and W.P.No.6165 of 2018 passed by this Court and quash the same and consequently, direct the respondents 1 to 3 to conduct an elaborate enquiry on the No Objection Certificate said to have been issued by the Tahsildar, Paramathi, in Na.Ka.No.7887/09 (A1) dated 26.09.2009 which was produced by the fifth respondent before this Court in W.P.No.21227 of 2010.

For Petitioner	:	Mr.N.Mohan
For Respondents	:	Mr.U.Baranidharan Additional Government Pleader for R1 to R3 Mr.K.Natarajan for R4 Mr.R.Marudhachalamurthy for R5

ORDER

This Writ Petition has been filed challenging the impugned order dated 20.09.2018 passed in Na.Ka.No.4504/2017 by the third respondent and for a consequential direction to the respondents 1 to 3 to conduct elaborate enquiry on the No Objection Certificate said to have been issued



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by the third respondent, which was produced by the fifth respondent before this Court in W.P.No.21227 of 2010.

2. The learned counsel appearing for the petitioner submits that Survey No.388/6 is classified as Kovil Poramboke in Village Adangal, however, the respondent Nos.4 and 5 are trying to occupy the land and filed O.S.No.446 of 2004 before the District Munsif Court, Paramathi, claiming easementary right over the land as if they were using the land as pathway for several years which was mentioned as "X" "Y" in the plaint plan and prayed for granting pathway as per the title deed which was mentioned as "A" "B" in the plaint plan and the suit was dismissed on 10.11.2008 with regard to the prayer of claiming pathway right in S.No.388/6 and decreed the suit in respect of another prayer (i.e.,) "A" "B" pathway. Aggrieved over the dismissal, they filed A.S.No.114 of 2008 before the Sub Court, Namakkal and it was also dismissed on 27.10.2017. While pending the appeal, the respondents 4 and 5 were trying to lay a road in the subject land and the respondent No.4 obtained No Objection Certificate from the third



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respondent for laying the road in the subject land. Objecting the same, one Kulandaivel filed W.P.No.29992 of 2018 before this Court and based on the statement made by the learned Government Advocate appearing for the respondent therein that the subject land is classified as Temple Poramboke and road laying work cannot be done and that the respondent therein has passed an order canceling the tender for the purpose of laying road in the subject land, the writ petition was closed. However, contrary to the statement made by the learned Government Advocate appearing for the respondent therein in W.P.No.29992 of 2018, the third respondent has passed the impugned order as if Survey No.388/6 was classified as Government Poramboke and it can be used as pathway. Hence, this Court may set aside the impugned order and remand the matter back to the third respondent.

3. Heard the learned counsel appearing for the petitioner, the learned Additional Government Pleader appearing for the respondents 1 to 3, the learned counsel appearing for the respondent No.4 and the learned counsel appearing for the respondent No.5.



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4. It appears that in the order dated 29.03.2023 passed in W.P.No.29992 of 2018 by this Court, the learned Government Advocate appearing for the respondent therein submitted that the land in Survey No.388/6 is classified as Temple Poramboke and road laying work cannot be done and the order was passed canceling the tender for laying road in the subject land. However, in the impugned order passed by the third respondent, it has been stated that the subject land was classified as Government Poramboke and it can be used as pathway by the public, which is contrary to the statement made by the learned Government Advocate appearing for the respondent in W.P.No.29992 of 2018. It is not open to the respondents to take divergent stand, one in the writ petition and the other in the impugned order which reveals non-application of mind to the materials available on record. Hence, the impugned order dated 20.09.2018 passed in Na.Ka.No.4504/2017 by the third respondent is set aside and the matter is remanded to the third respondent. The third respondent is directed to hear the petitioner as well as the respondent Nos.4 and 5 and also take into



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consideration the order dated 20.09.2018 passed in W.P.No.29992 of 2018 and the judgments passed in O.S.No.446 of 2004 dated 10.11.2008 and A.S.No.114 of 2008 dated 27.10.2017 and also the village records and pass appropriate orders within a period of eight weeks from the date of receipt of a copy of this order.

5. Accordingly, this Writ Petition is disposed of. There shall be no order as to costs. Connected miscellaneous petitions are closed.

11.09.2024

NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No
ssb



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M.DHANDAPANI,J.

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