
(2015) 01 MAD CK 0144
In the Madras High Court
Case No : Writ Petition No. 5315 of 2014

V. Vaijayanthi

APPELLANT

Vs

The District Collector and Others

RESPONDENT

Date of Decision : 23-01-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(e), 21

Tamil Nadu Survey and Boundaries Act, 1923 — Section 10, 11, 12, 13, 14

Citation : (2015) 01 MAD CK 0144

Hon'ble Judges : T.S. Sivagnanam, J.

Bench : Single Bench

Advocate : A.R.L. Sundaresan, Senior Counsel for P. Murali, for the Appellant; V. Jayaprakash Narayanan, Spl., G.P., Advocates for the Respondent

Final Decision : Dismissed

Judgement

T.S. Sivagnanam, J.—The petitioner seeks for issuance of a Writ of Mandamus, to forbear the respondents from interfering with the petitioner's possession of the lands in survey No. 647/3, 647/4, 647/5, 647/7, 647/8 and 655/2, bearing patta No. 461, at Keeralvadi village, Zamin Endathur Group, Madurantakam Taluk, Kancheepuram District, without following due process of law.

2. The petitioner would state that she is the absolute owner of the said land, the same having been purchased by her husband by registered sale deed, dated 05.07.1975 and after his demise, the petitioner is in possession and enjoyment of the said land and carrying on agricultural activities. It is further submitted that the fourth respondent has transferred the patta in the joint name of the petitioner and her sons and they have also mortgaged the property and obtained a loan from Indian Bank. It is submitted that on 10.04.2013, the fourth and fifth respondents along with local politicians came to the petitioner's residence and informed that they are to occupy the petitioner's agricultural land and to lay a Thar road, which was objected by the petitioner and a representation was also submitted. Since the petitioner apprehended forcible eviction, the petitioner has

filed this writ petition.

3. The learned Senior counsel appearing for the petitioner submitted that the petitioner is a lawful owner of the property and patta has been issued in the joint name of the petitioner and her sons and without acquiring the petitioner's land, no road could be formed and the action of the official respondents in attempting to evict the petitioner forcibly, is arbitrary and in violation of Article 14, 19(1)(e) and 21 of the Constitution of India. The learned Senior counsel appearing for the petitioner referred to the sale deed dated 07.05.1975, executed in favour of the petitioner's husband and the patta has been issued by the fourth respondent dated 07.05.2013 bearing patta No. 461 and submitted that the property is the absolute property of the petitioner and her sons and the official respondents have no power to form the road in the petitioner's private patta land and therefore, the petitioner cannot be dispossessed.

4. The learned Additional Government Pleader appearing for the official respondents by relying upon the counter affidavit filed by the fifth respondent submitted that there is a "cart track" in Survey No. 647/7 commencing from Madukarai-Cuddalore State Highways running through Survey Nos. 647, 644, 628, 627 and 620 cutting across Keeralvadi Village and this "cart track" has been in existence from time immemorial. It is submitted that a notification under Section 5 of the Madras Survey and Boundaries Act, 1923, (Act) was published in the District Gazette on 01.05.1951 in respect of the Endathur Group and Keeralvadi village, the entire village was surveyed and a notification was issued under Section 13 of the Act and published in the District Gazette on 01.09.1968. It is submitted that both the notifications, the existence of the cart track commencing from the road in the State Highways in Survey No. 648 and running through Survey Nos. 647, 644, 628, 627 and 620 has been marked, approved and finalised. It is further submitted that the survey boundaries in this regard has become final and the road was already in existence and therefore, the survey record has become conclusive as early as in the year 1968. It is further submitted that the petitioner's husband purchased the land in 1975 and he did not object to the existence of the road at the time of purchase. It is submitted that since the land in question is a road, the question of acquiring the land does not arise, moreso when, the road is already in existence for several decades and has been laid and relaid by the respondents on several occasions. Further, the road has been block topped under the SGRY scheme during 2007-08. Further it is submitted that the said road is only road available for the villagers from Keeralvadi village to reach the State Highways and there is no other public road available for the public to reach the State Highways. Further, it is submitted that there was no objection for laying the road at any point of time or its maintenance by the petitioner's predecessor in title nor her husband, who was alive till 2008. For the first time in January 2014, the objection has been raised, when steps were taken to re-lay the road.

5. So far as the patta issued by the fourth respondent, it is submitted that in the

records it has been mentioned as a public road/ cart track as per the FMB sketch and the road code and the register maintained by the department, it is shown that the road has been maintained for more than 40 years and has been continuously maintained and the expenses incurred have also been recorded. Further, it is reiterated that the boundaries were earmarked and finalised under Survey and Boundaries Act and notification was published in the Gazette on 01.09.1968 and the same has become final and the predecessor in title from whom the petitioner's husband purchased the land in 1975, that is much after the notification did not raise any objection to the boundaries fixed. Therefore, it is submitted that the official respondents have not occupied the entire property of the petitioner that is in Survey Nos. 657/3, 657/4, 657/5, 657/7, 657/8, 655/2 and cart track passes through eastern boundary of the property spreading in Survey Nos. 657/5 and 657/7. Further, it is submitted that in terms of Rule 18 of the Survey manual volume I in Chapter IV, the minimum width of Poramboke in the revenue accounts which has to be surveyed as a separate field or sub-division is 20 links and as the cart track which is under dispute is less than 20 links, it has not been shown as a separate sub-division and permitted to exist within the patta land of the petitioner and shown only in the form of "detail" in the village map. Further by referring to the erstwhile Board of Revenue proceedings in respect of assertion of Government rights, it is stated that it has been a practice in survey and settlement to mark details such as pathways, channels without actually making sub-divisions if the width does not exceed 20 links and the fact of inclusion of any such Government poramboke in any survey field does not therefore confer on the cultivator of that field, the right of entering on such poramboke shown as "details" or any way interfering with it. Further, it is submitted that the existence of the cart track is evident in the village map and cart track is passing through the adjacent survey filed that exists around the petitioner's property and the cart track is originating from the adjacent Periyavelikadu village and passes through survey Nos. 620, 627, 628, 644 and joins the main road that connects Chittiravadi and Melakandai villages. Therefore, it is submitted the case projected by the petitioner is wholly untenable.

6. The private respondents who were impleaded pursuant to orders passed in M.P.No. 2 of 2014, dated 01.07.2014, are residents of the village, who are owning lands of property in the said village and they would state that the road passes through the several survey numbers and it has been existence for more than 100 years and entire villagers have been reaching the State Highways using the said road and there is no alternate road to reach the State Highways. Further, it is stated that the road has been periodically maintained by village Panchayat and on more than seven occasions, the road has been repaired and re-laid by inviting tenders by the fifth respondent. Only when a tender was invited for re-laying the road in January 2014, the petitioner sought to put up cement pillars to block the road, which was removed by the villagers and others. Further, it is submitted that the school children will have to use the same road to reach the school and in case of emergency, the villagers have to use the said road to

reach the State Highway. Further, it is stated that only on 25.03.2014, the Writ Petitioner tried to alter the physical feature of the land using heavy machinery and put up a board stating that she has secured an interim order from this Court in this Writ Petition.

7. The learned counsel appearing for the private respondents referred to the map and pointed out that the road has been "detail" in dotted lines and the road passes from point A to point B in the map and it has been in existence from time immemorial. The learned counsel referred to the representations given by the villagers and the agitation which was done by the villagers, which was also reported in the Tamil daily on 07.03.2014. The learned counsel also referred to the photographs showing four pillars, which have been erected across the road and a board put up by the petitioner about the interim order granted in this Writ Petition.

8. In reply, the learned Senior counsel appearing for the petitioner submitted that what the private respondents seek in this writ petition is establishment of their easementary right and this cannot be done in a writ petition and in this regard reliance has been placed on the decision of the Hon'ble First Bench of this Court in W.P.No. 26722 of 2013, dated 11.08.2014.

9. Heard Mr. A.R.L. Sundaresan Senior counsel appearing for Mr. P. Murali learned counsel appearing for the petitioner, Mr. V. Jayaprakash Narayanan learned Additional Government Pleader appearing for the respondents 1 to 5 and Mr. S. Ramesh, learned counsel appearing for the respondents 6 to 77 and perused the materials placed on record.

10. The petitioner seeks for issuance of a Writ of Mandamus not to interfere with her possession of the land in question without following due process of law. The petitioner would state that there is an attempt made by the official respondents to form a road in a private patta land. It is not in dispute that the petitioner's husband had purchased certain lands by sale deed dated 07.05.1975. The official respondents as well as the private respondents would state that the road was in existence from time immemorial. On a perusal of a map for Edathur, Madurandakagam Taluk, Chengalpattu District, bearing map No. 173, which was prepared pursuant to a initial survey conducted in 1907 and a supplementary survey in 1955. The map clearly shows that a notification under Section 5 of the Madras Survey and Boundaries Act, 1923, was issued and published in the Government Gazette on 01.05.1951.

11. By virtue of the power conferred under Section 5 of the Act, the State Government or any officer or authority to whom the power has been delegated may by notification ordered a survey of any Government land or of any boundary of such land or on the boundary forming the common limit of Government land and the land that is not a Government land. Section 6(1) of the Act states that when any survey is ordered under Section 5, the survey officer shall publish a notification in the prescribed manner inviting all persons having any interest in

the land or in the boundaries of which the survey has been ordered, and supply information in connection therewith. In terms of sub-section (2) of Section 6 of the Act, the Gazette notification is deemed to be valid notice to persons interested. The Survey Officer is required to carry out the survey in the prescribed manner as per Section 7 of the Act. Section 9 empowers the Survey Officer to determine and record as undisputed boundary. In case of disputed boundary, power is given under Section 10 of the Act to the Survey Officer to determine and record as disputed boundary. Any person aggrieved by any decision of the Survey Officer under Section 9 or under Section 10 may file an appeal to the Appellate Authority under Section 11 and the time limit prescribed for filing such an appeal is in terms of Section 12, which stipulates that appeal shall be preferred within one month from the date of service of notice under Section 9 or 10 excluding the time taken to obtain copy of the decision. Section 12A provides a right of Second Appeal which shall be done within 60 days; Section 12B provides a revisional remedy to the Director of Survey and Settlement, who is entitled to exercise suo-moto power. Thereafter, the completion of demarcation is to be notified under Section 13 of the Act. If any person is aggrieved by such notification or determination of the boundary under Sections 9, 10, 11, 12A or 12B is entitled to institute a civil suit within three years from the date of notification under Section 13 to set aside or modify the said determination.

12. In the instant case, the date of notification under Section 5 was on 01.05.1951 and after following the procedure under the Act, the notification under Section 13 was issued and published in the District Gazette on 01.09.1968. Therefore, if any person who was aggrieved by such notification or action taken with regard to the determination of the boundaries under Sections, 9, 10, 11, 12A or 12B could have instituted a suit before the Civil Court within three years from 01.09.1968.

13. Admittedly, this has not been done by the predecessor in title of the petitioner's husband. The sale deed in favour of the petitioner's husband is in 1975 much after the period of three years from the date of notification under Section 13 of the Act. Therefore, the boundaries as fixed and published in the notification dated 01.09.1968 has attained the finality and the petitioner has absolutely no jurisdiction to question finality which was arrived at. More so, when her husband himself could not have questioned the finalisation of the boundary as much prior to the date of purchase itself, the limitation period had expired. The map also contains a Standard Referral Sheet which explains the "detailing" which has been done in the map and as per the standard referral sheet dotted lines intimate the "cart track".

14. It is clear from the sketch that a dotted line passes from the State Highway along several survey numbers that is 647, 644, 628, 627, 619, 620 and 618. Thus, the respondents have established that the road has been in existence for several decades and the notification published under the Madras Survey and

Boundaries Act has attained finality in the year 1968 itself, since there is no challenge to the same by any person aggrieved and no suit was instituted within the period of limitation as prescribed under Section 14 of the Act. Furthermore, the petitioner's husband purchased the property only in 1975 and the road was in existence as on the date of purchase and the averments in the counter affidavit filed by the fifth respondent states that the road has been maintained all these years, repaired, relaid etc., and the present attempt of the petitioner is a futile exercise and the Writ Petition is devoid of merits.

For all the above reasons, the petitioner has not made out a case for interference and the Writ Petition fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.