

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.03.2015

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P. No.21625 of 2014 &
M.P.No.1 of 2014

- 1.Sengunthar Samudhaya Podhu
Nala Sangam, rep. By its President
Chidambaram Taluk
- 2.K.P.Vasudevan
- 3.S.Muthukumarasamy ... Petitioners

Vs.

- 1.State of Tamil Nadu
rep. By the Collector
Cuddalore District.
- 2.Town Panchayat, Bhuvanagiri
rep. By its Executive Officer
Town Panchayat, Bhuvanagiri.
- 3.Anaithu Samugathinar Pothu
Nala Sangam, rep. By its
Secretary R.Chellapandian
4. C.Panneerselvam

[R3 & R4 impleaded as per order dt 3.2.2015 in
M.P.No.2/2014 in W.P.21625 of 2014]

.. Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue Writ of mandamus to forbear the respondents from interfering with the possession and enjoyment of the Iluppai Kulam situate at No.236/1, Bhuvanagiri-Adhivarahanatham Village, Chidambaram Taluk, without resorting to due process of law.

For Petitioners : Mr. T.R.Rajagopalan, Sr.Counsel
for Mr.C.V.Vijayakumar

For Respondents : Mr.R.Vijayakumar - R1 & R2
Addl.Govt. Pleader

Mr.A.RL.Sundaresan, Sr.Counsel
for Ms.A.L.Ganthimathi -R3 & R4

O R D E R

By consent of the learned counsel on either side, the writ petition is taken up for final disposal.

2.Heard Mr. T.R.Rajagopalan, learned Senior Counsel appearing for the petitioners, Mr.M.Vijayakumar, learned Additional Government Pleader, appearing for R1 & R2 and Mr.A.RL.Sundaresan, learned Senior Counsel, appearing for R3 & R4.

3.The the first petitioner is an Organisation called as Sengunthar Samudhaya Podhu Nala Sangam, 2nd petitioner is the Secretary of the Sangam and the third petition is the committee Member of the said Sangam. They have filed this Writ Petition praying for direction upon the respondents 1 & 2, not to interfere with their possession and enjoyment of water body called as Iluppai Kulam situate at No.236/1, Bhuvanagiri-Adhivarahanatham Village, Chidambaram Taluk, without resorting to due process of law.

4.The petitioners in the affidavit filed in support of the Writ Petition has stated that they are the 'Sangam' registered under the provisions of the Societies Registration Act, 1860 on 26.4.1975 and the water body was dug by the ancestors belonging to particular community about three centuries ago and was maintained by the successors who all belong to that particular community.

5.The petitioners would refer to certain disputes which occurred in 1902 and 1906. The petitioner Sangam is said to have been in possession and enjoyment of the Tank all these years and when there was disturbance at the instance of the second respondent, the petitioners filed a Suit before the District Munsif Court, Cuddalore, in O.S.No.211 of 2013, praying for a decree to declare their title to suit property and for a decree of permanent injunction.

6.In the said Suit, respondents 1 & 2 are defendants 1 & 2. The third and fourth respondents have got impleaded themselves in the said Suit as defendants 3 & 4. When the Suit is pending, an Interlocutory Application in I.A.No.454 of 2013 was filed, in which counter affidavit has been filed by the second respondent and the interlocutory application is also pending. In the interregnum, the petitioners have approached this Court for the aforementioned

relief.

7. In the normal circumstances, this Court will not interdict on civil proceedings. However, it appears that the reasons for approaching this Court at this juncture is on account of the proposal to pass a resolution by the second respondent Panchayat in the meeting which was scheduled to be held on 7.8.2014. This came to the notice of the petitioners when the draft resolution which were proposed to be discussed in the meeting where circulated vide notice dated 31.7.2014. Therefore, the petitioners cannot be fully faulted for having earlier approached the Civil Court. Thus, in the peculiar facts and circumstances of the case, it cannot be stated that the petitioners apprehension is not reasonable.

8. It may be true that the petitioners could have sought for early hearing of the Interlocutory Application. But, nevertheless the resolution passed by the Panchayat is not put to challenge before the Civil Court. At the time when the writ petition was entertained, an order of interim injunction was issued on 12.8.2014, subject to the condition that the property shall be maintained as water body and shall not be allowed to be put into any other use. It is stated that the said condition has been complied with and the property is retained as water body.

9. In the light of the above facts and taking note of the fact that a Suit for declaration and permanent injunction is pending before the District Munsif Court, Cuddalore, and there is also an Interlocutory Application, pending this Court is of the view that the District Munsif Court, Cuddalore, should consider the Interlocutory Application at the first instance, since already counter has been filed by the second respondent. In the interregnum, if the resolution proposed to be passed by the second respondent Panchayat is allowed to be proceeded further, then the application for interim injunction itself would virtually become infructuous. Therefore, there will be an order restraining the second respondent Panchayat from in any manner discussing the resolution pertaining to the Tank in question, till the Civil Court decides I.A.No.454 of 2013 in O.S.No. 211 of 2013, on the file of District Munsif Court, Cuddalore.

10. In the result, the Writ Petition is disposed of by directing the District Munsif Court, Cuddalore, to hear and dispose of I.A.No.454 of 2013 in O.S.No. 211 of 2013, as expeditiously as possible, preferably within a period of thirty days from the date of receipt of a copy of this order. The parties to the proceedings are directed to co-operate for the expeditious disposal of the Interlocutory Application. Till final orders are passed in the Interlocutory Application, the aforesaid resolution proposed to be passed by the second respondent Panchayat shall be kept in abeyance. The District Munsif Court, Cuddalore, is directed to decide the

Interlocutory Application in I.A.No.454 of 2013 in O.S.No. 211 of 2013 at the first instance based on the materials placed before this court, without in any manner being influenced by the observations made by this Court in the order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rpa
To

1.The Collector
State of Tamil Nadu
Cuddalore District.

2.The Executive Officer
Town Panchayat, Bhuvanagiri
Town Panchayat, Bhuvanagiri.

3.the District Munsif, Cuddalore.

1 cc to Government Pleader, Sr.No.11878

1 cc to Mr.C.V.Vijayakumar ,Advocate, SR.No.11787

1 cc to Mr. AL.Ganthimathi,Advocate, SR.No.11898

W.P. No.21625 of 2014

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