

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27..07..2015

CORAM

THE HON'BLE Mr.SANJAY KISHAN KAUL, CHIEF JUSTICE
and

THE HON'BLE Mr.JUSTICE T.S.SIVAGNANAM

W.P. No.22489 of 2015

S.Maheswaran

..Petitioner

Versus

1.The Secretary to Government of Tamil Nadu
Public Works Department,
Secretariat, Chennai 600 009.

2.The District Collector,
Tiruppur.

3.District Revenue Officer,
Collectorate, Tiruppur,

4.The Revenue Divisional Officer,
Office of RDO,
Katcheri Street, Udumalpet,
Tiruppur District.

5.The Superintending Engineer,
Public Works Department,
Water Resources Organisation,
Dharapuram, Tiruppur District.

6.The Superintending Engineer,
Tamil Nadu Generation and Distribution Corporation,
Erippalayam, Udumalpet,
Tiruppur District.

7.The Tahsildar,
Office of the Tahsildar,
Madathukulam Taluk,
Tiruppur District.

8.K.Kanagaraj

9.K.Ramasamy

10.K.Duraisamy

..Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Mandamus, directing the fourth respondent, Revenue Divisional Officer, Udumalpet to initiate action against the respondent Nos.8

to 10, who are illegally drawing water from the Amaravathy River by installing huge pipes on public canals and public roads and carrying away to their land situated at about 2 kilometers and also selling water to private parties using tanker lorries.

For Petitioner :: Mr.M.Purushothaman

For Respondents :: S.T.S.Murthy
Government Pleader for R.1 to R.5 and R.7

O R D E R

(Judgment of Court was made by The Hon'ble The Chief Justice)

Learned counsel for the petitioner submits that he is compelled to approach this Court under the Public Interest Litigation category as the Magistrate Courts are not exercising powers and in fact are taking a stand that for redressal of such grievances, the parties should only go in for Public Interest Litigations.

2. We are unable to appreciate how anyone could have taken such a stand in view of the clear judicial pronouncement of the Division Bench of this Court in R.Munuswamy vs.The District Collector/Executive Magistrate, Vellore and 8 others reported in (2008-4-LW 295). The Division Bench has referred to firstly the alternative remedy available in view of the Tamil Nadu Encroachment Act, 1905 where summary eviction of encroacher is provided for obtaining directions from the Executive Magistrate. It has been held that public interest litigation would not be appropriate course especially where the evidence is required and local situation has to be assessed. Sections 133 to 143 of Cr.P.C have been held to be the specific efficacious remedy. The Division Bench relied upon the observations of the Hon'ble Supreme Court in Municipal Council vs. Shri Vardichan reported in (1980(4)SCC 162), to the effect that though the power under Section 133 Cr.P.C may be discretionary, but it is a "public duty" to the Members of the Public who are victims of the nuisance and thus, the learned Magistrate would be required to exercise it when the jurisdictional facts are present.

3. To obtain clarity, we are reproducing paragraphs-18 and 19 of the earlier Division Bench judgment which reads as under:

"18.First of all, it is extremely difficult within the circumspect nature of jurisdiction of a writ court to decide the factual correctness of such allegations. It often happens when such allegations are made the only evidence before this Court is the writ petition supported by an affidavit. The writ court normally does not take evidence nor is it possible for the writ court to assess the local situation. But in a proceeding under Section 133 of the Code, the Magistrate is competent to take evidence, make local enquiry and probe the local

situation relating to the allegations of obstruction or encroachment on a public land. It has been the experience of this Court that in many cases, on the basis of such allegation of encroachment, orders have been passed by the writ court, which are subsequently challenged by the persons who are at the receiving end of such orders, but were not impleaded. As noted earlier, in a proceeding under Article 226 of the Constitution detailed factual enquiry is not possible, but a decision whether obstruction or encroachment has been made on a public land is essentially a decision on facts and can be reached only after some factual enquiry. Therefore, this Court feels that this legal question is required to be settled as many writ petitions have been filed in this Court alleging encroachment/obstruction on public and that is why this detailed judgment is delivered. Such questions should be decided by an authority which is entitled to go into the questions of fact and take evidence, hear the parties and assess the local situation, if necessary on the basis of a police report and then come to a decision.

19. It is well-settled principle that the power under Article 226 of the Constitution has to be exercised by observing certain self-imposed limitations. One of such well-recognised limitations is when the statute provides for an efficacious remedy, writ court should not entertain a case with a grievance which can be adequately dealt with under the relevant statute. This is specially true in this case where power has been conferred under Sections 133 to 143 of the Code in very wide terms and which, in a given case, is decided in Municipal Council, Ratlam (supra), mandate a public duty on the Magistrate to be exercised for public benefit. Therefore, the remedy under the Code is an efficacious one."

4. We may also refer to another Judgment of the Division Bench of this Court in Tamil Nadu State Marketing Corporation Ltd., represented by its Managing Director vs. R.M. Shah and Others reported in (2010(8) MLJ 304) once again referring to Section 133 of Cr.P.C in the context of alleged nuisance caused by opening of Bars by existence of TASMAC liquor shops. The Division Bench refused to exercise jurisdiction on the Public Interest Litigation asking the authorities to be sensitive in the context of the observations made in the Municipal Council's case cited supra.

5. In view of the aforesaid pronouncement, it cannot be in doubt that proceedings can be taken out under Section 133 of the Cr.P.C before the Magistrate.

6. Learned counsel for the petitioner seeks permission to take recourse to the aforesaid procedure. We grant liberty accordingly.

7. The writ petition stands disposed of in the aforesaid terms.
No costs. Consequently, M.P.No.1 of 2015 is also closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

ksr

To

- 1.The Secretary to Government of Tamil Nadu
Public Works Department, Secretariat, Chennai 600 009.
- 2.The District Collector, Tiruppur.
- 3.District Revenue Officer, Collectorate, Tiruppur,
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- 7.The Tahsildar, Office of the Tahsildar,
Madathukulam Taluk, Tiruppur District.

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