

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2015

CORAM:

THE HON'BLE MR. JUSTICE SATISH K. AGNIHOTRI
and
THE HON'BLE MR. JUSTICE M. VENUGOPAL

W.P. No.28883 of 2014 and M.P. No.1 of 2014

M.K.M. Steels
represented by its Managing Director
M. Sureshkumar
S/o M. Muthukrishnan
No.107/4, G.N.T. Road
Peravallur Village
Chinnambedu Post
Ponneri Taluk, Tiruvallur District

Petitioner

Vs.

1 The Junior Engineer (Irrigation)
Public Works Department
Arni
Tiruvallur District

2 The Tahsildar
Ponneri Taluk
Ponneri
Tiruvallur District

3 The Commissioner
Chozhavaram Panchayat Union
Chozhavaram
Tiruvallur District

4 The President
Andarkuppam Panchayat
Andarkuppan
Ponneri Taluk, Tiruvallur District

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari, calling for the entire records relating to the impugned notice issued by the first respondent in his letter no.Ko.10/JE(B)/2014 dated 31.10.2014 and quash the same.

For petitioner Mr. C. Prakasam
For RR 1 & 2 Mr. P.S. Sivashanmugasundaram
Special Government Pleader
For R4 No appearance

ORDER

(Order of the Court was made SATISH K. AGNIHOTRI, J.)

The instant writ petition has been filed questioning the legality and propriety of letter no.Ko.10 JE(A)/2014 dated 31.10.2014, whereby and whereunder, the petitioner has been called upon to remove the approach road as referred to in letter no.10/2014 dated 21.04.2014 addressed by the Junior Engineer, Irrigation, to facilitate free flow of water, as the approach road has been constructed in violation of the provisions of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007.

2 The case of the petitioner before us is that before laying the approach road, he was granted permission by the third respondent, viz., Commissioner of Chozhavaram Panchayat Union, vide order dated 29.10.2006 and also by the Tahsildar, vide order 15.06.2006, who are the competent officers to grant No Objection Certificate. Thus, the laying of the approach road is neither illegal nor unauthorised.

3 Pursuant to the notice ordered by this Court on 04.12.2014, the second respondent has filed counter affidavit dated 10.03.2015 stating that the area in question comes within the control and jurisdiction of the Public Works Department. The said No Objection Certificate dated 15.06.2006 was issued by the erstwhile Tahsildar, without having jurisdiction and as such, the same is not a valid document.

4 Mr. P.S. Sivashanmugasundaram, learned Special Government Pleader appearing for the respondents 1 and 2 also makes the same submission that the erstwhile Tahsildar has no jurisdiction to give certificate in respect of the area in question, which comes under the control of the Public Works Department.

5 The Public Works Department, in its counter affidavit dated 19.01.2015 and additional counter affidavit dated 27.01.2015, has clearly stated that the petitioner has encroached upon the Survey No.109/1 which is classified as "Eri Ulvay" (water spread area) and which is under the control of the first respondent. Thus, the same amounts to encroachment which is not permissible. It is further averred that the said unauthorised and illegal structure impedes the

free flow of water meant for agriculturists and other beneficiaries. Accordingly, notice was issued to the petitioner to remove the structure.

6 The learned counsel for the petitioner submits that the petitioner be given liberty to file a detailed representation, enclosing all the relevant documents to establish his right over the area in question. It is further contended that there are several other persons who have made encroachments in the area in question.

7 We have examined the facts of the case from all angles. We are of the considered opinion that if there is any encroachment on the "Eri Ulvay" (water spread area) in question, by any person, including the petitioner, the first respondent is under an obligation to take action forthwith, after giving an opportunity of hearing to all the parties concerned. Such exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order to ensure maintenance of the water body in question, without any hindrance and without any unauthorised encroachment or obstruction.

8 The writ petition stands disposed of with the above said observations. No costs. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

cad

To

- 1 The Junior Engineer (Irrigation)
Public Works Department
Arni
Tiruvallur District

- 2 The Tahsildar
Ponneri Taluk
Ponneri
Tiruvallur District

- 3 The Commissioner
Chozhavaram Panchayat Union
Chozhavaram
Tiruvallur District

4 The President
Andarkuppam Panchayat
Andarkuppan
Ponneri Taluk, Tiruvallur District

1 cc to Mr. C.Prakasam, Advocate, SR.No.14878
1 cc to Government Pleader, Sr.No,15057

W.P. No.28883 of 2014

ala(co)
pmk.25.3.2015



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