

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2015

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.23033 of 2012
and M.P.No.1 of 2012

1.K.Mohanraj
2.K.Ravikumar
3.P.T.Sasikumar ... Petitioners

Vs

1.The Corporation of Erode,
Represented by its Executive Engineer,
Brough Road,
Erode - 638 004.

2.The Commissioner,
Corporation of Erode,
Brough Road,
Erode - 638 004.

3.Head Quarters, Deputy Tahsildar
Erode.
(R3 - suo-moto impleaded by order dated 27.11.2015)
... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in Na.Ka.No.Pa.Sa.Thi.21927/06 dated 10.08.2012 and quash the same and consequently forbear the respondents from constructing an underground drainage in the lands of the petitioners bearing Re-Survey No.175/1 and 175/3 at Periyasemur Village, Erode District without following the due process of the law

For Petitioner : Mr.K.Doraiswami
Senior Counsel
for Mr.T.Gowthaman

For Respondents 1 & 2 : Mr.R.Sivakumar
for Mr.M.Rajamathivanan

ORDER

Heard Mr.K.Doraisami, learned Senior Counsel assisted by Mr.T.Gowthaman, learned counsel appearing for the petitioner and Mr.R.Sivakumar, the learned Standing Counsel appearing for the respondents, assisted by Mr.M.Rajamathivan and with the consent on either side, the Writ Petition is taken up for final disposal.

2. The petitioner seeks for issuance of a Writ of Certiorari to quash the order passed by the first respondent on 10.08.2012 and to forbear the respondent from constructing an underground drainage in his lands comprised in Survey No.175/1 and 175/3 situated at Periyasemur Village, Erode District, without following the due process of law.

3. Though elaborate submissions was made on either side and voluminous communications and records were placed before this Court, in my view there is no necessity to go into the merits of such submissions, since the dispute between the parties lies in a narrow compass.

4. The learned counsel appearing for the respondents submits that the allegations about malafide against the respondent-Corporation cannot be taken into consideration, since the persons against whom those allegations are made have not been made as parties. This submission is well founded and accordingly, those allegations of malafide stands rejected.

5. As observed earlier, the dispute between the parties is as to whether the respondent Corporation would be entitled to draw the pipeline for underground drainage system through the property in question. The petitioners have produced before this Court, copies of pattas issued in their favour bearing Patta Nos.752, 568 and 569 in respect of Survey Nos.175/1, 175/3, 175/4, 174/2 and 175/2. All those pattas have been issued by the Head Quarters Deputy Tahsildar, Erode. They are in the computerised format and it contains signature and seal of the said Authorities. In the typed set of papers, copies of the pattas have been filed. Therefore, the petitioners would state that they are entitled to enjoy the patta land in their individual capacity and the question of laying the pipeline across the petitioners' land will not arise. It is the further submission that even assuming that the lands are classified as "Nilaviyal Vandipaathai", that by itself does not empower the respondent to take action without due process of law.

6. In the counter affidavit filed by the respondent and documents annexed in the typed set of papers along with the counter, the respondent would take a stand that the lands in question are "Nilaviyal Vandipaathai" and the respondent-Corporation is entitled to lay the pipeline in exercise of its powers conferred under Section 222 of the Erode City Municipal Corporation Act. To state that the lands have been classified as "Nilaviyal Vandipaathai", the respondent/ Corporation has produced copies of "A" Register and FMB sketch. Based on these documents, it is stated that the land is "Nilaviyal Vandipaathai" which is used as a pathway. Therefore, the land can be used for laying underground pipeline, which will not affect the use of petitioner's land for other activities. It is further submitted that the Project is of utmost importance as it is going to cover a distance of 500km within the estimated cost of Rs.209.22 crores and for a distance of 11.11km the work has been completed and only a distance of 165 mtrs. could not be completed, because, the petitioner has filed this Writ Petition. These factual averments are disputed by the petitioner.

7. After hearing the parties and after perusing the materials placed on record, it is to be seen as to whether the patta issued in favour of the petitioner as stated above is a valid patta and it is in consonance with the records maintained by the Revenue Department. The patta issued to the petitioners do not state that the lands are classified as "Nilaviyal Vandipaathai" whereas the records produced by the respondent shows that these lands are classified as "Nilaviyal Vandipaathai". Therefore, the issue as to what is the correct classification of the land, cannot be decided by this Court in a Writ Petition. Neither can the respondent Corporation decide the issue. The only competent authority to decide the issue is the Revenue Authority, and for which the respondent ought to have moved the Revenue Authority with appropriate application for clarification. Since the project is of utmost importance and the matter has been put on hold since 2012, due to pendency of this writ petition and only the distance of about 165 metres is alleged to be completed, this Court is of the view that a direction should be issued to the Revenue Authorities to resolve the issues.

8. In order to give an effective direction, it is necessary that the concerned Tahsildar is impleaded as a respondent in the Writ Petition. Accordingly, the Head Quarters, Deputy Tahsildar Erode is suo-moto impleaded as third respondent in the Writ Petition and the cause title be accordingly corrected.

9. Accordingly, the Writ Petition is disposed of by directing the petitioner to submit an application to the concerned Tahsildar, the third respondent enclosing all the records and setting out the facts and details and if such application is made before the concerned Tahsildar, the third respondent, shall issue notice to the petitioners as well as to the respondents 1 and 2 and, after affording an opportunity of personal hearing to the parties, pass a reasoned order on merits within a period of three weeks. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

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To

1.The Corporation of Erode,
Represented by its Executive Engineer,
Brough Road, Erode - 638 004.

2.The Commissioner,
Corporation of Erode,
Brough Road, Erode-638 004.

3.Head Quarters, Deputy Tahsildar
Erode.

+1 cc to Mr.T.Gowthaman, Advocate, sr.64843

+1 cc to Mr.M.Raja Mathivanan, Advocate, sr.64837

W.P.No.23033 of 2012

vsn co

kra 22.12.2015

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