

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2015

CORAM :

THE HONOURABLE MR. JUSTICE T. RAJA

W.P.NO. 27013 OF 2007

Mr. Raja Jaya Sekar

.. Petitioner

Vs.

1. The District Collector
Salem District
Salem.

2. The District Revenue Officer
Salem District
Salem.

3. The Revenue Divisional Officer
Mettur Dam
Salem District.

4. The Tahsildar
Omalur Taluk
Omalu, Salem District.

.. Respondents

PRAYER: This Writ petition is filed under Article 226 of Constitution of India, praying for the issuance of a Writ of Mandamus, forbearing the respondents their men, agents, subordinates, contractors from interfering with the petitioner's possession and enjoyment and re-opening of the private canal forming part and parcel of the lands S. No. 120/4B measuring an extent about 3 Acres and 64 Cents and S.F. No. 126/1 measuring 1.18 acres of Kottamettupatti Village, Omalur Taluk, Salem District, covered under patta No.271.

For Petitioner : Mr. V. Manohar

For Respondents : Mr. N. Srinivasan, AGP

O R D E R

Mr. Raja Jaya Sekar has come to this Court by filing this Writ Petition under Article 226 of the Constitution of India seeking for a Writ of Mandamus to forbear the respondents their men, agents,

subordinates, contractors from interfering with the petitioner's possession and enjoyment and re-opening of the private canal forming part and parcel of the lands S. No. 120/4B measuring an extent about 3 Acres and 64 Cents and S.F. No. 126/1 measuring 1.18 acres of Kottamettupatti Village, Omalur Taluk, Salem District, covered under patta No.271.

2. Learned counsel appearing for the petitioner would submit that his father has inherited the lands in Survey No. 119/1 situated at Kotamettupatti Village, Omalur Taluk, Salem having an extent of 60 cents, in Survey No.120/4 measuring an extent of about 5 acres and 86 cents and in Survey No.126/1 measuring an extent of about 1 acre and 18 cents. Cultivation in these lands are all done only during the rainy season. However, the lands covered in Survey No.119/1 is classified as a wet land by the Government. For the purpose of cultivation of these lands the petitioner's family take water through the well and some times from the rain water. In 2001, the Government acquired the petitioner's land to the extent of about 1 acre and 70 cents in Survey No.120/4 for the purpose of widening the road NH-7 as it is lying adjacent to the National Highways. After the said acquisition the petitioner was left with only an extent of 3 acres and 34 cents of the land in Survey No.120/4. The lands adjacent to the petitioner's land are being cultivated from the sources of water taken out from the Chettipatti Eri using one canal. Sometimes, the excess water coming in the canal is also diverted by the petitioner. Otherwise the accumulation of the water could cause damage to the petitioner's cultivations and lands. However, for more than 10 years there has been no excess water in the eri. As a result, there has been no cultivation also in the land. Learned counsel further submitted that the canal is running only in the patta land belonging to the petitioner and the same had never been utilised for the purpose of watering any other lands. This could be seen from the Field Map maintained by the Government also.

3. When the matter stands as above, the neighbouring land owner enjoying the benefits, instigated some third parties who were no way connected with the petitioner's land to trespass into their lands in Survey Nos.120/4 and 126/1 to create a scene as though the canal that lies in the petitioner's patta land is for the purpose of providing water to other lands. In view of the above instigation, respondents 2 and 3 made attempts to survey his lands in order to re-open the private canal. Such an act of trespass by the respondents 2 and 3 is unlawful and their attempt to survey the canal which is running into the petitioner's land for the purpose of re-opening the water canal is unfair and unlawful. Hence, the petitioner has sought for a Writ of Mandamus, to restrain the respondents from trespassing into their land. Learned counsel appearing for the petitioner further submitted that by citing public interest if the respondents want to streamline the water running in the canal for the purpose of

irrigation by the other land owners, they are duty bound to put the petitioner on notice to get their concurrence. Without such notice the respondents cannot interfere into the patta land. Concluding his argument, he submitted that in the counter affidavit filed by the fourth respondent it is admitted that the canal runs through the patta lands belonging to the petitioner. Therefore, he pleaded this Court to restrain the respondents from interfering with the canal which is running through the petitioner's patta land.

4. Learned Additional Government Pleader appearing for the respondents would submit that the lands in question are owned by the petitioner. As per instructions of the respondents, learned Additional Government Pleader submitted that the petitioner has been utilising the surplus water coming from the canal that runs from Chettipatti Eri (Tank) through Survey Nos.126/1, 120/4B1, 119/1A and 119/1B, which finally reaches Sarabanga river. But the petitioner had deliberately prevented the water from flowing into the other lands. When the petitioner has been cultivating his huge lands by using the water coming from Chettipatti Eri (Tank) he cannot be allowed to demolish the entire canal. Equally, he cannot be allowed to encroach the canal under the guise of stagnating surplus water. Only to restore the water flow, the respondents are taking bonafide steps to remove the same that normally take place due to passage of time in Survey Nos. 120/4B1 and 126/1 which are petitioner's lands. Since the main source of water for irrigation purpose in Kotamettupatti Village, Omalur Taluk has been totally curtailed by the petitioner and as this has been complained by the public, steps have been taken to remove the encroachment, only to give way the flowing water to reach the lands in other Survey Numbers so that the water can be utilised by the other patta holders in and around that area.

5. It is at this point of time Mr. V. Manohar, learned counsel appearing for the petitioner would submit that earlier steps were taken by the then local M.L.A to renovate the canal but that proposal had already been abandoned.

6. Hence, if the respondents again persist for renovation of the canal running through the petitioner's patta lands, the petitioners are entitled to receive notice within a reasonable time. In such event, the petitioner would co-operate either for renovation or for clearing the canal by removing any obstruction which is usually formed due to passage of time. As the canal is admittedly running into the petitioner's land covered in Survey Nos. 120/4B and 126/1, having allowed the water to go into his land the petitioner cannot prevent the respondents from undertaking any repairing or renovation work. It is needless to mention that in the event of clearing the obstructions the respondents are directed to give notice to the petitioner. In such circumstances, the petitioner is expected

to co-operate with the respondents.

7. With the above direction, the Writ Petition is disposed of. No order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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2. The District Revenue Officer
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Salem District.
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Omalur Taluk
Omalu, Salem District.

1 cc to Mr.V.Manohar ,Advocate, SR.No.5007

1 cc to Government Pleader, Sr.No5114

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