



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 01.10.2015

CORAM:
THE HONOURABLE Mr.JUSTICE R.SUBBIAH
W.P.(MD)No.13183 of 2015
and
M.P.(MD)No.1 of 2015

Muthumanickam

... Petitioner

Vs.

1.The District Collector,
Sivagangai District.

2.The Revenue Divisional Officer,
Devakottai,
Sivagangai District.

3.The Tahsildar,
Devakottai Taluk,
Sivagangai District.

4.The Block Development Officer,
Kannangudi Panchayat Union,
Devakottai Taluk,
Sivagangai District.

5.The President,
Anumanthangudi Village Panchayat,
Devakottai Taluk,
Sivagangai District.

6.Joseph

... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 1st respondent not to give permission to the respondents 3 and 5 for carrying out any work in the petitioner's Temple, Oorani and land situated in Survey Nos.567/5 and 567/6, Alangudi Village, Anumanthangudi Group, Devakottai Taluk, Sivagangai District.

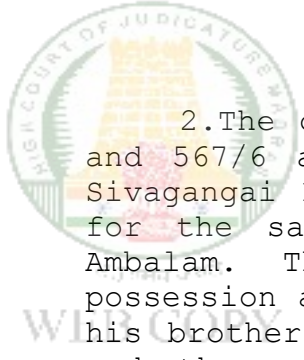
For Petitioner : Mr.V.Kannan

For Respondents : Mr.G.Muthukannan, G.A. for R1 to R5

(Predelivery order reserved on 02.09.2015 and delivered on 01.10.2015)

ORDER

This Writ petition has been filed to issue a Writ of Mandamus, directing the 1st respondent not to give permission to the respondents 3 and 5 for carrying out any work in the petitioner's Temple, Oorani and the land situated in Survey No.567/5 and 567/6 at Alangudi Village, Anumanthangudi Group, Devakottai Taluk, Sivagangai District.

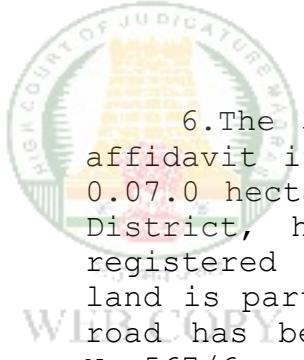


2.The case of the petitioner is that a property in Survey Nos.567/5 and 567/6 at Alangudi Village, Anumanthangudi Group, Devakottai Taluk, Sivagangai District originally belonged to Kanthasamy Ambalam. The Patta for the said property was also statnding in the name of Kanthasamy Ambalam. The petitioner's father viz., Palaniyappan Ambalam was in possession and enjoyment of the said properties. Now, the petitioner and his brother are in possession and enjoyment of the aforesaid properties and the petitioner is cultivating in the said land. In the said property, a family temple viz., Dharma Muneeswarar Temple and a small house have been constructed. A Oorani situates in Survey No.567/6 belongs to the petitioner and the same has been maintained by the petitioner.

3.It is further stated by the petitioner that the 6th respondent has attempted to interfere with the peaceful possession and enjoyment of the aforesaid properties. The respondents 1 to 5 have laid road on the petitioner's property and are trying to disturb the petitioner's possession. Hence, the petitioner and his brother have filed a suit in O.S.No.75 of 2014 before the District Munsif, Devakottai, seeking the relief of permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the properties. Another suit in O.S.No.75 of 2015 has also been filed seeking for the relief of declaration, mandatory injunction and for permanent injunction. The suits are still pending. However, the Government acquired the properties, which is in possession and enjoyment of the petitioner and his brother.

4.The grievance of the petitioner is that due to the motive in an bye election on the 6th respondent, who was elected as President of the 5th respondent Panchayat claimed that the said Oorani is a Panchayat property and the 6th respondent is taking steps to carry out maintenance work in the said Oorani. Hence, according to the petitioner, the act of the 6th respondent is in violation to the rights guaranteed under the Constitution of India. The intention of the 6th respondent is to grab the property of the petitioner. The petitioner further contended that In the month of July 2015, the 3rd respondent came to the property of the petitioner along with the 6th respondent and attempted to measure the property. However, the petitioner raised objection to measure the property. Thereafter, the 3rd respondent threatened and informed the petitioner that on 03.08.2015, he will carry out the maintenance work in the said Oorani along with the 6th respondent. In this regard, the respondents 4 and 5 are taking steps to issue work order to a private contractor. The acts of the respondents 3 to 5 are highly illegal and motivated. Despite the objection of the petitioner, the respondents 3 to 5 have not chosen to issue proper notice to the petitioner and to submit the documents in favour of the petitioner. Though the petitioner is having a perfect title and patta in his favour, the respondents 3 to 5 are trying to encroach the properties.

5.In this regard, the petitioner submitted a detailed representation dated 07.07.2015 to the respondents 1 to 4 through registered post. However, the respondents 3 and 5 are taking steps for issuing work order for maintaining the Oorani. Since no action has been taken by the respondents, the petitioner is before this Court with the present Writ petition.



6.The 3rd respondent has filed a counter affidavit. In the counter affidavit it has been stated that Survey No.567/5 covering an extent of 0.07.0 hectares in Hanumanthakkudi Village, Devakottai Taluk, Sivagangai District, has been classified as Ryot Punjai and the same has been registered in the names of one Kumaresan and one Muthumanickam. This land is partly under the possession and enjoyment of the petitioner and a road has been laid in this land. The other land situated in Survey No.567/6 covering an extent of 0.17.5 Hectares in Hanumanthakkudi Village, Devakottai Taluk, Sivagangai District has been classified as Government Poramboke and the same was registered as "Vithiyadi Oorani", a water body and the said water body is being used by the general public.

7.The 1st respondent has passed an order in Roc.No.T.A.4/2535/2015, dated 25.06.2015 for maintaining the said Oorani and for increasing its storage capacity. Accordingly, the 5th respondent has initiated the process. The writ petitioner has filed a suit in O.S.No. 75 of 2015 before the District Munsif Court, Devakottai, seeking permanent injunction and the said suit is still pending.

8.It is further stated by the 3rd respondent that as per the Village record, the land situate in Survey No.567/6 has been classified as "Vithiyadi Oorani" a water body and as it is being used by the public, the respondents are taking steps to strengthen the Oorani for welfare of the local people. As per Section 9A(1) of the Tamil Nadu Lease Holds (Abolition and Conversion into Ryotwari) Act, 1963, no Ryotwari patta shall be granted in respect of any private tank or Oorani. Even before the Updating of Registry Scheme, the Survey No.567/6 has been classified as Government Poramboke and the same is registered as Oorani. Even if patta had been granted in favour of the petitioner in respect of the said Oorani, it should be cancelled as per Section 9A(2) of the Tamil Nadu Lease Holds (Abolition and Conversion into Ryotwari) Act, 1963. Hence, the actions of the respondents are in accordance with law.

9.Heard the learned counsel for the petitioner, learned Government Advocate appearing for the respondents and perused the materials on record.

10.Admittedly, the patta for the said Oorani is standing in the name of the petitioner and his brother. However, according to the respondent, as per Section 9A(2) of the Tamil Nadu Lease Holds (Abolition and Conversion into Ryotwari) Act, 1963, the petitioner is not entitled for patta. The said section reads as under:

"Any Ryotwari patta granted in respect of any private tank or oorani under this Act before the date of the publication of the Tamil Nadu Inam Estates, Leaseholds, and Minor Inams (Abolition and Conversion into Ryotwari) Amendment Act, 1975 in the Tamil Nadu Government Gazette, shall stand cancelled and for purpose of compensation under this Act, the private tank or oorani shall be deemed to be land occupied neither by the lessee nor by any other person."

11.Further, the petitioner has filed two suits before the District Munsif Court, Devakottai in O.S.Nos.75 of 2014 and 75 of 2015 and the same are pending. The relief sought for in the said suits is raised before this Court in the present Writ petition. Hence, two parallel remedies for the same issue is not permissible.



12. In a decision of the Hon'ble Supreme Court reported in 1977 (1) SCC 1 (*Jai Singh Vs. Union of India and others*), it has been held that High Court should not in exercise of its extraordinary jurisdiction while granting the relief, when a party has already filed a suit, in which, similar relief has been sought for. Therefore, it is apt to mention that the Hon'ble Supreme Court is of the opinion that the litigant cannot pursue two parallel remedies in respect of the same matter at the same time.

13. In view of the above said decision of the Hon'ble Supreme Court, the petitioner is not entitled to seek similar prayer before the Civil Court as well as before this Court. Hence, the present Writ petition cannot be entertained as the petitioner has already approached the Civil Court for the very same relief.

14. Accordingly, the Writ petition is dismissed. No costs. Consequently, connected M.P. is closed. While doing so, it is made clear that the Civil Court can deal with the issue on its own merits and in accordance with law without being influenced by any of the observations made in this order.

Sd/
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

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Sivagangai District.

2. The Revenue Divisional Officer,
Devakottai, Sivagangai District.

3. The Tahsildar,
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W.P. (MD) No. 13183 of 2015
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GJM/KBM/04.11.2015 : 4P/6C