



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 29.06.2015

CORAM:

THE HONOURABLE Mr. JUSTICE M.M.SUNDRESH

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Cr1.O.P(MD)No7583 of 2013

and

M.P(MD)Nos.1 of 2013 and 1 of 2014

J.Gnanaolivu

... Petitioner

Vs

1.The District Collector,
Madurai District, Madurai.

2.The Sub-Divisional Magistrate cum
Revenue Divisional Officer,
Madurai.

3.The Executive Engineer,
Public Works Department/
Water Resource Organization,
Periyar Main Canal Division,
Melur.

4.The Tahsildar,
Madurai North Taluk,
Collectorate Campus,
Madurai.

5.The Oomatchikulam Panchayat,
Rep. By its President,
Oomatchikulam,
Madurai.

6.Athiswari

... Respondents

(R6 is impleaded as per the orders of this Honourable
Court dated 05.09.2014 made in M.P(MD)No.2 of 2013
in Cr1.O.P(MD)No.7583 of 2013)

Prayer:- Criminal Original Petition filed under Section 482 of
Cr.P.C to call for the records of the second respondent's order
in Na.Ka.No.4465/2012/M, dated 15.04.2013 and quash the same as
it has no prima facie case as against the petitioner.



For Petitioner : Mr. Ananth C. Rajesh
For R-1 to R-5 : Mrs. S. Prabha
Government Advocate (Crl. Side)
For R-6 : Mr. S. A. Ajmalkhan

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ORDER

Challenging the order passed under Section 133 Cr.P.C., by which the petitioner was asked to remove the encroached portion on the ground of nuisance in Survey No. 113/2 situated in Chettikulam Village, Oomatchikulam, Madurai North Circle, Madurai District, which is said to be a Vaikal poramboke, the present petition has been filed.

2. The learned counsel for the petitioner submitted that the order impugned does not disclose any reason and the petitioner has not been heard. The basis for the order has not been disclosed and there is total non-application of mind and therefore, the impugned order will have to be set aside.

3. The learned counsel for the respondent No. 6, who has got impleaded in this petition, would submit that this is the sixth round of litigation. Earlier, five writ petitions have been filed. Even in this petition, earlier, Commissioner has been appointed and he has also filed a report on 22.09.2014 clearly indicating the encroachment made and this petition filed, is abuse of process of law and therefore, this petition will have to be dismissed.

4. Under Section 133 Cr.P.C., the Executive Magistrate can pass a conditional order. If there is any objection, he has to issue notice and hear the party concerned and based upon the materials, shall make the order absolute, if he is otherwise satisfied. Therefore, the impugned order will have to be construed as a preliminary one. Since the petitioner is objecting to the proposed removal and agitating his right over the years before this Court continuously, a direction is issued to the second respondent to issue notice to the petitioner to show-cause as to why the order passed shall not be made absolute. After considering the objections in full and after affording a personal hearing, appropriate final order will have to be passed. The entire exercise will have to be done within a period of two months from the date of receipt of a copy of



this order.
accordingly.
are closed.

This Criminal Original Petition is ordered
Consequently, connected miscellaneous petitions

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Sd

ASST REGISTRAR (P AND A)

TRUE COPY

SUB ASST REGISTRAR

pm

To

- 1.The District Collector,
Madurai District, Madurai.
- 2.The Sub-Divisional Magistrate cum
Revenue Divisional Officer,
Madurai.
- 3.The Executive Engineer,
Public Works Department/
Water Resource Organization,
Periyar Main Canal Division,
Melur.
- 4.The Tahsildar,
Madurai North Taluk,
Collectorate Campus,
Madurai.
- 5.The President, Oomatchikulam Panchayat,
Oomatchikulam, Madurai.
6. The Addl Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

1CC TO MR. ANANTH ADV SR: 35099

DM 10 JULY 2015 - 3P 8C

W.P (MD) No.7583 of 2013
29.06.2015