

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 24.02.2016

DATE OF DECISION: 29.02.2016

CORAM:

The Honourable Mr. SANJAY KISHAN KAUL, CHIEF JUSTICE
and

The Honourable Mr. Justice M.M.SUNDRESH

W.A.No.1186 of 1999, W.P.No.1947 of 2010
and Contempt Petition No.986 of 2010

W.A.No.1186 of 1999:

The Executive Officer,
Kothagiri Town Panchayat,
Kothagiri,
Nilgiris District.

... Appellant

Vs.

- 1 The Kothagiri Nadaipathai
Small Merchants Association,
represented by its Honorary President,
T.Balakrishnan,
Police Station Road,
Kothagiri,
Nilgiris District,

- 2 The Tahsildar,
Kothagiri
Nilgiris District.

सत्यमेव जयते ... Respondents

W.P.No.1947 of 2010:

Kothagiri Nadappathai Small
Merchants Association,
Society No.29/85, rep.by
its Honorary President
T.Balakrishnan
S/o.S.Thirumalai
Market Road, Kothagiri
Nilgiri District.

.... Petitioner

Vs.

1. The Executive Officer,
Kothagiri Town Panchayath,
Kothagiri,
Nilgiri Distirct,

2. The Thasildhar,
Kothagiri Taluk,
Nilgiri District,

3. The Inspector of Police,
Kothagiri Police Station,
Nilgiri District.

.... Respondents

Contempt Petition No.986 of 2010:

The Kothagiri Nadaipathai
Small Merchants Association,
(Regd.No.29, represented by the
Honourary President,
T.Balakrishnan,
Kothagiri,
Nilgiris District.

.... Petitioner

Vs.

M.Halcurai
The Exeuctive Officer,
Kothagiri Town Panchayat,
Kothagiri,
Nilgiris District.

.... Respondent

Prayer: Writ Appeal in W.A.No.1186 of 1999 is filed under Clause 15 of the Letters Patent against the Order dated 7.9.1998 made in W.P.No.3150 of 1990.

Writ Petition in W.P.No.1947 of 2010 is filed under Article 226 of the Constitution of India seeking for the relief of issuance of writ of mandamus to forbear the respondent from enforcing the Na.Ka.No.142/2010 dated 29.01.2010 and evicting the petitioners from their shops at old red Kothagiri.

Contempt Petition No.986 of 2010 is filed under Section 11 of the Contempt of courts Act praying to punish the respondent for contempt by disobeying the Order this Court in W.A.No.1186 of 1999 dated 3.8.2000.

For Appellant : Mr.Bhavani Subarayan
in W.A.No.1186 of
1999 and for
respondent No.1 in
Cont.P.No.986 of 2010

For Petitioner in : Mr.R.Sankarasubbu
W.P.No.1947 of 2010
and Cont.Petition
No.986 of 2010 and
for Respondent No.1
in W.A.No.1186
of 1999

For Respondent Nos.: Mr.V.R.Kamalanathan
1 to 3 in W.P.No.1947 Additional Govt.Pleader
of 2010

JUDGMENT

M.M.Sundresh,J.

As the issue involved in all these matters is one and the same, they have been taken up together and disposed of by a common judgment. For the sake of convenience, the parties are referred to as arrayed in W.A.No.1186 of 1999.

2. Respondent No.1 filed a writ petition in W.P.No.3150 of 1990 seeking a writ of mandamus directing the appellant and respondent No.2 to assign the land individually occupied by its members by running their respective shops. The learned single Judge allowed the said writ petition by order dated 7.9.1998 on the ground that the appellant, having indulged in the practice of receiving fees and the members of respondent No.1 were making representations from 1985 onwards they should be assigned the respective lands occupied by them. Consequently, the appellant and respondent No.2 were given liberty to fix the rent or fees for the respective shops.

3. Being aggrieved over the order aforesaid, Writ Appeal No.1186 of 1999 has been filed. Pending the Writ Appeal, notices have been issued by the appellant to the members of respondent No.1 Association to remove the respective shops put up by them in the land belonging to it on the road, so as to carry out the work of laying sewerage channel. Challenging the said order, W.P.No.1947 of 2010 has been filed, inter alia, alleging that the order aforesaid is contumacious, Contempt Petition No.986 of 2010 has been filed. It is to be noted that the Writ Appeal No.1186 of 1999 was dismissed by the Order dated 3.8.2000, as the appellant has failed to comply with the direction issued towards filing of batta. Incidentally, the same was restored by a subsequent order.

4. Learned counsel appearing for the appellant submitted that constructions have been put up by the members of respondent No.1 unauthorisedly over the road. The documents produced would show that the land in question is a road and unauthorised constructions have been put up without due permission. It has also led to the flooding of important places as there is an obstruction to the free flow of water during heavy rains. The condition of the unauthorised constructions put up is also precarious. The members of respondent No.1 do not have a legal right to encroach and do vending on a road.

5. Learned counsel appearing for respondent No.1 submitted that it is not right to state that the encroachments have been made on a road. It is only a Government poramboke land.

Respondent No.2 has also sent a communication stating that it is a private property. The members of respondent No.1 are doing the business for number of years. The learned single Judge has passed the order by taking into consideration of the relevant materials. Thus, no interference is required. Consequently, it is submitted that the Writ Petition No.1947 of 2010 will have to be allowed. Yet another submission has been made that the subsequent conduct of the appellant through the resolution dated 26.4.2002 would make the appeal infructuous.

6. As rightly submitted by the learned counsel for the appellant, the members of respondent No.1 Association do not have a vested right. Merely because certain persons were permitted to exhibit sale articles in the platform during sandhai days - Sunday and Monday during specific time period, a vested right cannot be created. Similarly, the collection of fees, if any, and the service connections given also would not give any right to the members of respondent No.1. Admittedly, no permission was given earlier by the appellant. After going through the relevant records, we are of the view that the members of respondent No.1 Association have put up unauthorised constructions on the road side. Even assuming that the land is private, the very writ petitions would not be maintainable. It is also not the case of respondent No.1, who incidentally claims right against the appellant and respondent No.2 relying on the fees collected.

7. The averment made in the counter affidavit of the appellant that the deponent of the affidavit filed in support of the writ petition has disposed of the shop sheds unauthorisedly as was the case with many of the others was not denied or disputed. Be that as it may, in the absence of any legal right, respondent No.1 cannot come to this Court seeking the prayer as sought for. The resolution dated 26.4.2002 neither gives any right to the members of respondent No.1 nor make the writ appeal infructuous. A careful perusal of the said resolution would make the position very clear that it was passed as an interim measure. Thus, we are of the view that the order passed by the learned single Judge warrants interference. The learned single Judge has allowed the writ petition merely on the ground that the members of respondent No.1 were exhibiting sale articles in the platform during sandhai days - Sunday and Monday and they have been trying for several years for the allotment of shops. There is absolutely no justification for the unauthorised constructions made, being contrary to law.

8. For the above said reasons, we do not find in the merit in the writ petition filed in W.P.No.1947 of 2010. As the very same issue is the subject matter of the Contempt Petition, the discussion made above would also be applicable to it. We also do not find any willful disobedience on the part of the appellant.

9. Accordingly, W.A.No.1186 of 1999 stands allowed by setting aside the order dated 7.9.1998 passed by the learned single Judge in W.P.No.3150 of 1990. Consequently, W.P.No.1947 of 2010 is dismissed and the Contempt Petition No.986 of 2010 is closed.

(Annexure xerox copy of the enclosed)

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Executive Officer,
Kothagiri Town Panchayath,
Kothagiri,
Nilgiri Distirct,
2. The Thasildhar,
Kothagiri Taluk,
Nilgiri District,
3. The Inspector of Police,
Kothagiri Police Station,
Nilgiri District.

+1cc to Mrs. Bhavani Subbaroyan, Advocate, S.R.No.13130
+1cc to Mr.R. Sankarasubbu, Advocate, S.R.No.12923
+1cc to the Government Pleader, S.R.No.1273

W.A.No.1186 of 1999,
W.P.No.1947 of 2010
and Cont.P.No.986 of 2010

GJ(CO)
Eu 15.03.16

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