

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 22.03.2016

Pronounced on : 05-04-2016

Coram

THE HONOURABLE MR. JUSTICE R. SUBBIAH

Writ Petition No. 29561 of 2015

A. Mohammed Zaffarullah

.. Petitioner

Versus

1. The Executive Engineer
Public Works Department
Bhavani Sagar Dam, Bhavani Sagar

2. The Tahsildar
Nilgiris

3. The Commissioner
Udhagamandalam Municipality
Ooty

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records in Na.Ka.11874/2015/F1 dated 19.11.2015 on the file of the third respondent and quash the same as illegal, inconsequential and irregular and further forbear the respondents from interfering with the construction of the RCC Bridge over the Kodappa Mandu water channel.

(Prayer amended as per the order dated 28.01.2016 made in M.P. No. 2 of 2015 in WP No. 29561 of 2015)

For Petitioner : Mr. V. Raghavachari

For Respondents : Mr. P. Sanjay Gandhi
Additional Government Pleader

ORDER

The petitioner calls in question the order dated 19.11.2015 passed by the third respondent and after quashing the said order seeks for a consequential direction to the respondents not to interfere with the construction of the RCC Bridge by him over the Kodappa Mandu water channel.

2. The petitioner claims that the property situated in Old Survey No. 1740 to 1743 in Armoury Cottage, Ootacamund belonged to him. Apart from the said property, the petitioner also owns other properties. In the properties owned by the petitioner, a stream called Kopadappa Mandu Water Channel intersects across the lands of the petitioner at some points. In order to help to drain rain water during moonsons, a channel was constructed by the respondents. In such circumstances, the petitioner thought it fit to construct a bridge across his own lands so as to gain easy access to the other end of the lands owned by him. In this connection, the petitioner has obtained permission from the first respondent on 30.10.2013 and thereafter he started constructing a bridge to connect either side of his lands by engaging the services of a contractor. Such permission was granted by the first respondent after thoroughly scrutinising the documents submitted by the petitioner and subject to certain conditions. While so, on 12.09.2015, the second and third respondents unlawfully entered into the property of the petitioner and threatened to raze down the construction. When the petitioner contended that he had obtained prior permission from the first respondent for construction of the bridge, they did not heed to such plea of the petitioner. According to the petitioner, the second and third respondents, without any authority of law, have prevented the petitioner from constructing the bridge inter alia attempted to demolish the bridge put up by the petitioner. According to the petitioner, the first respondent is vested with the right over the channel and the respondents 2 and 3 have no right, whatsoever, over the channel or the construction put up by him. The petitioner therefore filed this writ petition originally with a prayer for a Mandamus forbearing the respondents from interfering with the construction of the RCC Bridge over the Kodappa Mandu Water channel. Subsequently, the prayer was amended by questioning the validity of the order dated 19.11.2015 of the third respondent and for a consequential direction to restrain the respondents from interfering with construction of the bridge by the petitioner.

3. The learned counsel for the petitioner would submit that on 30.10.2013, the first respondent has granted permission to him based on which he had proceeded to put up a construction of bridge. While so, the second and third respondent, who have nothing to do with the construction of the bridge by the petitioner, have attempted to interfere with the construction and also caused threat to demolish the construction put up by the petitioner. According to the petitioner, in order to obtain necessary permission from the third respondent municipality, he has submitted an application on 15.09.2015, but the same was rejected by the impugned order dated 19.11.2015. The impugned order was passed without even hearing the petitioner or

affording an opportunity to the petitioner to put forth his submission. The learned counsel for the petitioner therefore prayed for allowing the writ petition as prayed for.

4. The learned Additional Government Pleader, relying on the counter affidavit of the first and third respondent, would submit that the first respondent has not given any permission to the petitioner to construct a bridge on 30.10.2013. What was mentioned in the order dated 30.10.2013 is a technical opinion for construction of RCC (Reinforced Cement Concrete) bridge over the Kodappamund water channel which passes through the land of the petitioner. The petitioner has misconstrued the technical opinion given on 30.10.2013 as a permission granted for construction of a RCC Bridge and therefore, it shall be construed that the Bridge in question is being constructed by the petitioner without obtaining prior permission. Further, even assuming that permission was given by the first respondent, the petitioner has to obtain No Objection Certificate from the third respondent, who is vested with the ownership of the land. In fact, when the petitioner applied to the first respondent for grant of No Objection Certificate, the same was placed in the council meeting and a resolution No.999 was passed by the municipal council rejecting the claim of the petitioner. It is further contended by the learned Additional Government Pleader that as per the town survey document, the land over which the channel flows, is classified as government poromboke and therefore the third respondent is the paramount titleholder of such land. It is also submitted that even in the technical opinion submitted by the first respondent in favour of the petitioner, certain conditions have been incorporated. Condition No.7 clearly states that if any objection is received from the general public in future, the technical nod given by the first respondent shall stand cancelled automatically. According to the learned Additional Government Pleader, the general public have raised objection for construction of bridge by the petitioner and therefore it was stopped. Further, on the basis of the complaint given by the general public, the President of Village Panchayat has given a complaint to the Municipal Council which led to the passing of the resolution by the municipality. It is further submitted that it is not as though the petitioner could not access to the other side of his own land. In fact, there is a road adjacent to his land and by using the same, the petitioner can very well have access to his land.

5. I heard the counsel for both sides and perused the materials placed on record. The petitioner claims to have obtained prior permission from the first respondent to construct a bridge over his lands but it was denied by the first respondent. According to the first respondent, the petitioner was not given any permission, as alleged but what was given is

only a technical nod as to the feasibility of constructing a bridge.

6. On careful consideration of the submission of the counsel for both sides and on perusal of the proceedings dated 30.10.2013 said to have been given by the first respondent in favour of the petitioner, it is seen that the first respondent has granted permission to the petitioner for construction of a bridge at his own costs. It is evident from the proceedings dated 30.10.2013 that before passing the said order, a field inspection was conducted by the Assistant Executive Engineer, Sub-Division, Uthagamandalam. It is also seen that in the said order dated 30.10.2013 certain conditions have been imposed by the first respondent. After imposing the conditions, it is stated that the petitioner has to execute an agreement with the first respondent in a stamp paper having denomination of Rs.100/-. Therefore, it is evident that the first respondent has inclined to grant permission but it is not known whether an agreement has been executed between the petitioner and the first respondent incorporating the conditions mentioned in the proceedings dated 30.10.2013 of the first respondent.

7. Having regard to the above facts and circumstances, this Court is of the view that no positive direction could be issued in this case. This Court is also not inclined to go into the validity or otherwise of the order passed by the third respondent, which is impugned in this writ petition. However, this Court is inclined to permit the petitioner to submit a representation to the District Collector, The Nilgiris District and on receipt of such representation, the District Collector, The Nilgiris District shall conduct an enquiry affording an opportunity to the petitioner as well as the respondents herein and thereafter pass appropriate orders on merits on the claim of the petitioner for construction of a bridge within a period of eight weeks thereafter.

8. The writ petition is disposed of on the above terms. No costs. Consequently, connected MP Nos. 1 and 4 of 2015 are closed.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

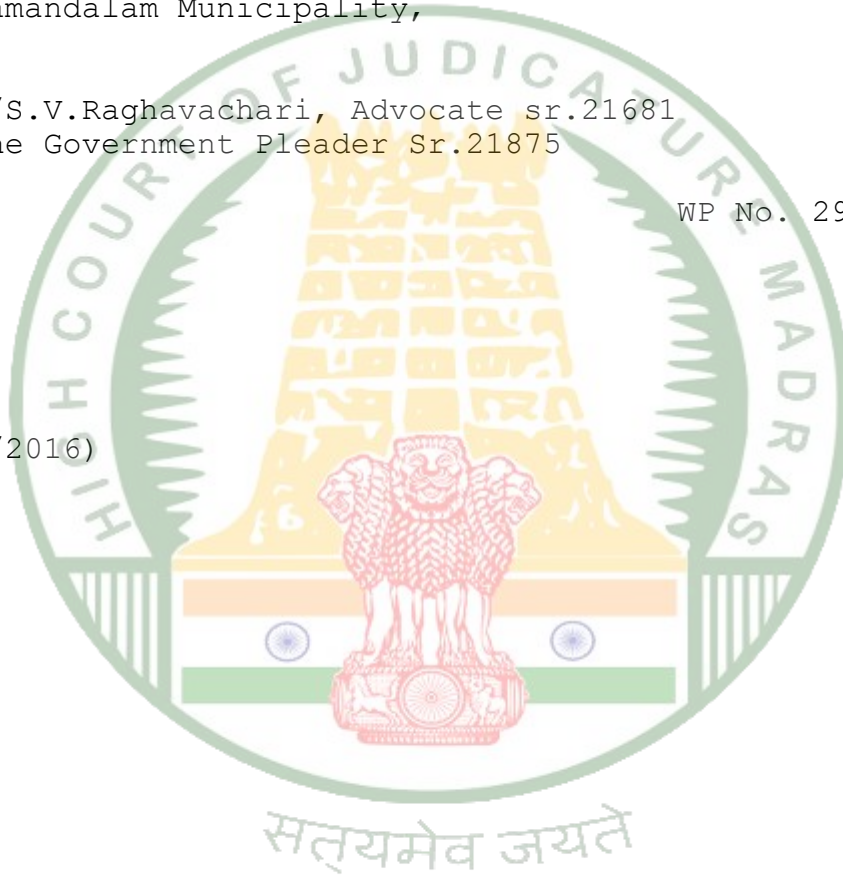
To

1. The Executive Engineer,
Public Works Department,
Bhavani Sagar Dam, Bhavani Sagar.
2. The Tahsildar,
Nilgiris.
3. The Commissioner,
Udhagamandalam Municipality,
Ooty.

+1cc to M/S.V.Raghavachari, Advocate sr.21681
+1cc to the Government Pleader Sr.21875

WP No. 29561 of 2015

mp (CO)
srg (25/04/2016)



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