



WEB COPY

1

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.11.2015

CORAM :

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

Writ Petition (MD) No.144 of 2015

M.Chellam

.. Petitioner

Vs.

1.The District Collector,
Sivagangai District.

2.The District Revenue Officer,
Sivagangai.

3.The Revenue Divisional Officer,
Sivagangai.

4.The Tahsildar,
Ilayangudi Taluk,
Sivagangai.

5.Thangam

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to remove the road which has been set up in the middle of the channel by considering the representation dated 22.12.2014.

For Petitioner	: Mr.S.Satheesh Kumar
For RR - 1 to 4	: Mr.M.Alagadevan Special Government Pleader
For R - 5	: Mr.A.Sivaji

ORDER

(Order of the Court was made by V.RAMASUBRAMANIAN,J.)

The petitioner has come up with the above writ petition seeking a mandamus to direct the respondents to remove the encroachment that is allegedly made in a water body by constructing a road over the same.

2.Heard Mr.S.Satheeshkumar, learned counsel for the petitioner, Mr.M.Alagadevan, learned Special Government Pleader appearing for the respondents 1 to 4 and Mr.A.Sivaji, learned counsel appearing for the fifth respondent.

3.In brief the case of the petitioner is that in the land in Survey No.2/6B, Veladimadai Village, Keelanettur Group, Ilayangudi, Sivaganga District, the fifth respondent has laid a road over a water body to reach his house. According to the petitioner, this has resulted in the water flow to the agricultural fields getting stopped.

<https://hcservices.ecourts.gov.in/hcservices/>

4.The fifth respondent has filed counter affidavit contending



that he is the owner of the land in Survey No.1/15A and that the road now laid provides the only access to his house. According to the fifth respondent, the pathway was formed during the year 1997 after the approval and permission by the Panchayat Union and that the house was constructed by obtaining a loan from a Co-operative Society. According to the fifth respondent, a culvert is laid so that the free flow of water is not obstructed by the construction of the pathway.

5.The fifth respondent also relies upon a judgment and decree dated 09.06.2009 passed in O.S.No.209 of 2014 on the file of the Sub Court, Sivagangai.

6.There is no dispute about the fact that Survey No.2/6B has now been reclassified as road. But even admittedly it was a water channel. The respondents have no doubt allowed the construction of a road after forming a culvert which itself shows that there was a water body.

7.After the advent of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007, there could be no encroachments under any guise, on water bodies. The Act itself came as a consequence of the directions issued by a Division Bench of this Court in L.Krishnan vs. State of Tamil Nadu (2005 (4) CTC 1).

8.Even recently the First Bench of this Court has passed an order that even Government and Governmental authorities cannot put up constructions in water bodies.

9.It is seen from the copy of the judgment of the Civil Court that the fifth respondent and others filed a civil suit for a bare injunction against the District Collector and the Inspector of Police, for preventing them from interfering with their possession of the pathway. Unfortunately the District Collector and the Police remained ex parte in the suit. This has resulted in the suit being decreed.

10.As a matter of fact, the Civil Court's jurisdiction under the Tamil Nadu Land Encroachment Act, 1905 stands ousted. This Bench has also passed an order on 06.08.2014 to the effect that the Civil Court could grant no prohibitory order.

11.The contention of the learned counsel for the fifth respondent that the decision of this Court dated 06.08.2014 is with respect to the interim order only, cannot be accepted. If even interim order cannot be granted, it is not possible for the Civil Court to grant a final relief especially when suits of this nature are not maintainable.

12.Therefore, the writ petition is allowed directing the respondents to restore the water channel to its original position within eight weeks after giving opportunity to the fifth respondent. No costs.

Sd/-

Assistant Registrar(crl.side)

/True copy/



To

1.The District Collector,
Sivagangai District.

2.The District Revenue Officer,
Sivagangai.

3.The Revenue Divisional Officer,
Sivagangain.

4.The Tahsildar,
Ilayangudi Taluk,
Sivagangai.

+1cc to special Government Pleader SR.No.67676

+1cc to mr.S.Satheesh Kumar, Advocate Sr.No.67134

+1cc to Mr.A.Sivaji, Advocate SR.No.67446

sm:GSV-AN:02.12.2015:3P/8C

Writ Petition (MD) No.144 of 2015
24.11.2015