



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:06.07.2016

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THE HONOURABLE MR.JUSTICE M.VENUGOPAL

Writ Petition (MD). No.22884 of 2015

and

M.P. (MD).No.1 of 2015

and

W.M.P. (MD).No.2875 of 2016

T.Dhanalakshmi

... Petitioner

Vs.

1.The District Collector,
Thoothukudi District,
Thoothukudi.

2.The Commissioner,
Thoothukudi Municipal Corporation,
Thoothukudi.

... Respondents

Prayer:-Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus forbearing the respondents herein from obstructing the ingress and egress to the petitioner's property situate at Door No.146, Palayamkottai Road, Thoothukudi by raising the height of culvert with 2 feet height from the Road Level in front of the petitioner's complex namely 'Manickam Towers'.

For Petitioner

:No appearance

For Respondents

:Mr.K.Guru for R-1

Addl. Government Pleader

No appearance for R- 2

O R D E R

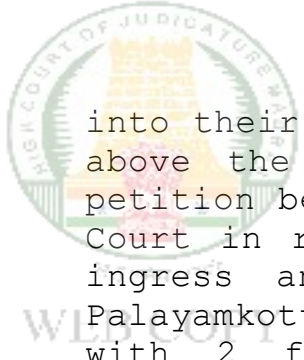
Heard the Learned Additional Government Pleader appearing for the first respondent/District Collector, Thoothukudi District.

2. According to the petitioner, she and her brother M.Ramesh are the absolute owners of the property measuring an extent of 1 acre and 17 cents of land comprised in Town Sy.No.3485 part, 3486/2 part, 3488/1, 3489/2, 3489/3 and 3490 part situated at Ward No.4, Block No.22 at Palayamkottai Road, Thoothukudi and further they are in continuous possession and enjoyment of the property.

means of

5. The prime case of the petitioner is that she along with her brother own the property in question jointly and in fact, the aforesaid property is constructed for commercial usage and the said property is situated in a place, where traffic movement is very much congestive. When that be the facts situation, the 2nd respondent/ Commissioner, Thoothukudi Municipal Corporation, had started the construction of culvert for drainage of rain water at the northern edge of Thoothukudi-Palayamkottai State Highways i.e to say the said culvert is being constructed in front of their property i.e at the entrance.

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



into their complex, as the height of the culvert would be two feet above the road level'. Hence, she has filed the present writ petition before this Court praying for passing of an order by this Court in restraining the respondents herein from obstructing the ingress and egress to her property situate at door No.146, Palayamkottai Road, Thoothukudi by raising the height of culvert with 2 feet height from the road level in front of the petitioner's complex namely 'Manickam Towers'.

7. At this stage, this Court has perused the contents of the counter affidavit filed in the vacate stay petition in W.M.P. (MD).No.2875 of 2016 in W.P.(MD).No.22884 of 2015, (filed by the second respondent/ Commissioner, Thoothukudi Municipal Corporation) to the effect that there is an alternative entrance to the 'Manickam Towers' in the western side, Toovipuram Street (Raj Theatre) and the same is being used by the petitioner for the day to day activities of the business concern, 'Manickam Towers'. Further, it is mentioned in the vacate stay petition that by virtue of the power conferred under Article 243-G of the Constitution of India, the Corporation of Thoothukudi passed a resolution No.50, dated 25.03.2015 to regularize the drainage water in Thoothukudi-Palayamkottai Road to alleviate the public inconvenience by constructing drainage with pathway from V.V.D Junction to Jeyaraj Road Junction in three phases, first phase from V.V.D Junction to Mani Nagar, 2nd phase from Mani Nagar to Manickam Towers, 3rd phase from Manickam Towers to Jeyaraj Road and the total stretch is 750 meters and the 3rd phase approximate estimate is Rs.31 lakhs.

8. It is to be noted that by means of resolution No.50, dated 25.03.2015, tender notification was issued on 06.05.2015. Consequently, work order was given on 01.07.2015 and as far as the 3rd phase was concerned, the work commenced on 03.07.2015, as per the condition of the tender, accordingly, the Manickam Towers to Jeyaraj Road (3rd phase) must be completed within 07.01.2016 and that the contractor completed the wall to the height of 2¼ feet (0.65 meters) in front of the Manickam Towers on 11.11.2015 to that extent of 7 meters (Manickam Tower frontage). However, construction of the drainage was illegally demolished by the petitioner, on 12.11.2015 midnight to the extent of ¾ feet (0.20 meters) height and on the same day, a concrete slab was placed over the reduced wall i.e 1½ feet (0.45 meters) in front of the Manickam Towers and thereby the petitioner prevented the free flow of drainage water course.

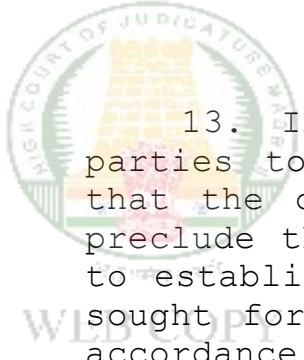
9. Apart from the above, the second respondent, at paragraph No.7 of the counter to the writ petition had stated that on 04.12.2015, during Collector's meeting with the Corporation Engineers in respect of completing the drainage from Jeyaraj Road to V.V.D. Junction, it was reported that the petitioner concern by their own unilateral action demolished the frontage of Manickam Towers. In respect of the construction of drainage with pathway pursuant to the resolution No.50, dated 25.03.2015 of the Thoothukudi Corporation.



10. Added further, one Kailasam, gave a petition before the first respondent/District Collector, Thoothukudi alleging that they also want the same height as equal to the Manickam Tower frontage by virtue of equal treatment. Accordingly, the first respondent directed the Engineers of Corporation to demolish the self constructed frontage of Manickam Towers in respect of drainage and pathway in pursuant to the resolution No.50, dated 25.03.2015. Under these circumstances, the Corporation had taken steps to demolish the unilateral construction illegally made by the petitioner, over the frontage of Manickam Towers. However, the petitioner, by suppressing the true facts before this Court had filed the writ petition *inter alia* stating that the 2nd respondent/ Commissioner, Thoothukudi Municipal Corporation is preventing the 'free ingress and egress of the petitioner concern viz., 'Manickam Towers'.

11. The substance of the counter of the 2nd respondent is that if the public drainage and pathway is prevented, ultimately, the public welfare will be put in jeopardy.

12. This Court has gone through the contents of the writ affidavit and the contents of the vacate stay petition in W.M.P. (MD).No.2875 of 2016 in W.P.(MD).No.22884 of 2015, filed by the 2nd respondent/ Commissioner, Thoothukudi Municipal Corporation and is of the considered view that the petitioner, in the main writ petition, has only sought for the relief of passing of an order by this Court in forbearing the respondents from obstructing the ingress and egress to her property situate at door No.146, Palayamkottai Road, Thoothukudi by raising the height of culvert with 2 feet height from the road level in front of the her complex namely 'Manickam Towers'. Suffice it for this Court to succinctly point out that the relief sought for by the petitioner in the main writ petition is one of 'Easementary Right' and for establishing that right, the petitioner has a remedy of filing a civil suit before the competent Court of Law. Without exhausting the said remedy of filing of a suit to establish the easementary right of ingress and egress, the petitioner has invoked the extraordinary jurisdiction of this Court under Article 226 of Constitution of India. It is to be noted that the jurisdiction of the Honourable High Court under Article 226 of the Constitution of India, although it is extraordinary, yet, it is discretionary one. If the petitioner has a viable, effective and alternative remedy of approaching the competent Civil Court for the relief of obstruction relating to ingress and egress to her property, as stated in the writ petition, then, this Court is of the considered view that the petitioner is only to approach the competent Civil Court to establish her easementary right in the manner known to Law and in accordance with Law. Without approaching the competent Civil Court to establish her right, the petitioner has preferred the present writ petition before this Court and the same is premature and otiose one. Consequently, the writ petition *sans* merits.



13. In fine, the writ petition is dismissed, leaving the parties to bear their own costs. It is pertinently made clear that the dismissal of the writ petition by this Court will not preclude the petitioner to approach the competent Civil Court and to establish her right of easement in regard to the relief sought for by her, of course in the manner known to Law and in accordance with Law. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar(AS)

/TRUE COPY/

Sub Assistant Registrar

To

1.The District Collector,
Thoothukudi District,
Thoothukudi.

2.The Commissioner,
Thoothukudi Municipal Corporation,
Thoothukudi.

+1cc to Mr.V.SANJEEVI,ADVOCATE SR NO: 35250

+2cc's to M/S.THE SPECIAL GOVERNMENT PLEADER, SR NO: 35410

JA-DB/15.07.2016/5P:5C

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