



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.08.2016

CORAM :

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THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO
and
THE HONOURABLE MR.JUSTICE S.S.SUNDAR

Writ Petition (MD) No.10791 of 2016
and
W.M.P. (MD) No.11141 of 2016

N.Ganesan

... Petitioner

-Vs-

1.The District Collector,
Dindigul District,
Dindigul.

2.The Executive Engineer,
TANGEDCO
(Tamil Nadu Generation and Distribution Corporation)
Palani.

3.The Tahsildar,
Palani Taluk,
Palani,
Dindigul District.

4.R.Madhavan

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the 1st and 2nd respondents to remove the encroachment made by the 4th respondents in the detail channel passing through survey Nos. 703/1A and 703/1C situate in Balasamudram Village, Palani Taluk, Dindigul District and to remove the electric posts installed there within a time frame.

For Petitioner	: Mr.C.Arul Vadivel @ Sekar
For Respondents	: Mr.A.K.Baskarapandian
1 and 3	Special Government Pleader
For Respondent 2	: M/s.S.M.S.Johnny Basha
For Respondent 4	: Mr.Veera Kathiravan
	Senior Counsel
	for Mr.C.Jeganathan

ORDER

(Order of the Court was made
by NOOTY.RAMAMOHANA RAO,J)

This Writ Petition is instituted by a resident of Balasamudram Village of Palani Taluk, Dindigul District, seeking a writ of mandamus directing the respondents 1 and 2 to remove the encroachment made by the fourth respondent in the detail channel passing through Survey Nos.703/1A and 703/1C, Balasamudram Village and also to remove the electric posts installed there within a time frame.

2.The first respondent to the Writ Petition is the District Collector of the Dindigul District, while the Executive Engineer of the Tamil Nadu Generation and Distribution Corporation is the second respondent, the third respondent is the Tahsildar, Palani Taluk and the fourth respondent is the individual who, it is alleged to have encroached upon the land known as detail channel passing through Survey Nos.1133/2A and also 703/1C, 703/1B, 703/1A and 703/4 to ultimately reach Survey No.721 and merge with Palaru Dam.

3.We have the advantage of perusing the counter affidavit filed by the third respondent Tahsildar and the second respondent Executive Engineer before us. In paragraph 5 of the counter affidavit filed by the Tahsildar, it is set out that there is a detail channel called as "Raja Vaikkal" which runs through several survey numbers in the village but what is important to note is that the next statement in the paragraph No.5 made by the Tahsildar to the following effect "but its usage is only in the rainy season, not in regular days." In paragraph No.6 of the counter affidavit, the Tahsildar would submit that there are no measurements recorded of the detail channel. However, it is true that the detail channel ultimately reaches the Palaru dam. In paragraph No.9 of the counter affidavit, the following averments are made therein:

"9.I submit that the averments in para 7 of the affidavit is denied as follows. Since the channel is runs through the patta land, there is no question of encroachment by the fourth respondent. As already stated that the channel is only running in the rainy season, its course of action was not visible in the field. Hence, the respondent, who has purchased the same recently made of fence in it. The same has been made in the detail channel also. After representation of the petitioner, we have instructed the fourth respondent to maintain the detail channel runs through his field, has been fenced.

We have informed the fourth respondent to remove the fence, after the receipt of the petition from the writ petitioner. Immediately i.e., within 3 days the fourth

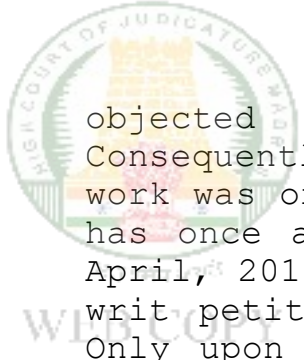


respondent, remove the fierce and make a provision for detailed channel for its courses."

4. From the contents of the above paragraph, what emerges is that there is a detail channel, carrying rain waters passing through the village in several survey numbers to ultimately discharge the waters in Palaru dam. It also emerges that the channel is also running through the patta land of the fourth respondent and what is of utmost importance for our enquiry is the statement that there is no encroachment made thereon by the fourth respondent. In view of this assertion of fact by the Tahsildar who in fact has also inspected the lands in question, it will be difficult for us to record a finding of fact that the fourth respondent in fact has encroached upon any government land including the detail channel land.

5. As we could understand a detail channel is one which allows rain waters to pass by the gravitational method and as we have noticed, the waters get discharged in Palaru dam. Therefore, while we understand the anxiety of the writ petitioner to ensure that no obstructions are caused across the detail channel and thus prevent the rain waters from getting discharged into Palaru dam duly passing through the detail channel, but however, we cannot assume that the fourth respondent had made any encroachment, in particular, in the land through which the detail channel is passing through. Even if he has erected a pole as a part of fencing exercise around his fields, the contents in paragraph 9 of the counter affidavit of the Tahsildar make it clear that the fourth respondent has also removed the fence upon receipt of the instructions passed on by the Tahsildar pursuant to the petition submitted by the writ petitioner. Therefore, the objective of the writ petitioner has already been achieved.

6. However, there is also one another component to the prayer of the writ petitioner which touches upon removing of electric poles. The second respondent Executive Engineer has filed a detailed counter affidavit in this matter. In paragraph No.3, it is stated that a low tension agricultural service connection No.25 stands in the name of R.Madhavan, the fourth respondent and that the agricultural service connection line has crossed the land belonging to the fourth respondent and the fourth respondent has requested the second respondent to shift the low tension line and that the second respondent after inspecting the land came to the conclusion that shifting of low tension line is technically feasible and hence, accepted the request of the fourth respondent and the fourth respondent has submitted an application on 25th July, 2015 and remitted a sum of Rs.92,720/- on 19.08.2015 under the "deposit contribution work scheme" for the purpose of shifting the low tension electric line. However, when the second respondent had taken up the execution of the work in October, 2015, the writ petitioner along with some other persons has



objected to the shifting of low tension line itself. Consequently, the execution of the work was suspended. When the work was once again taken up in January, 2016, the writ petitioner has once again objected. In those set of circumstances, on 15th April, 2016, an inspection was carried out in the presence of the writ petitioner, the second respondent and the third respondent. Only upon being satisfied that the low tension electric wire is being shifted in accordance with law, the writ petitioner orally agreed and consented for carrying out the work. Therefore, the second respondent has taken up the execution of the work and completed the same the next day i.e., on 16th April, 2016. From the contents of this affidavit, we gather that the remaining grievance of the writ petitioner has also been neutralized by 16th April, 2016 itself. In these set of circumstances, in our opinion, no further orders are needed to be passed in this writ petition and hence, the writ petition stands disposed of, as we are satisfied that no encroachment has been either attempted or made by the fourth respondent. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar.

To

- 1.The District Collector,
Dindigul District,
Dindigul.
- 2.The Executive Engineer,
TANGEDCO
(Tamil Nadu Generation and Distribution Corporation)
Palani.
- 3.The Tahsildar,
Palani Taluk,
Palani,
Dindigul District.

+1CC to M/S.C.Arul Vadivel @ Sekar, Advocate, SR.No. 45494
+1CC to M/S.P.Mahendran, Advocate, SR.No. 45181

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