



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.06.2016

CORAM :

WEB COPY

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

Writ Petition (MD) No.10900 of 2016
& WMP(MD) Nos.8444 & 8445 of 2016

Madurai Central Market Vegetable
and Perishable Commodities
Merchant Coordinated Association
Rep.by its President,
Vilangudi,
Madurai.

...Petitioner

-Vs-.

1.The Assistant Engineer,
Public Works Department-WRO,
Irrigation Section No.II,
Periyar Vaigai Basin Sub-Division No.I,
Madurai-2.

2.M.C.N.Manikam

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari by calling the records relating to the proceedings of the first respondent in Ka.No.117/Ko.4/2016 dated 14.06.2016 and quash the same.

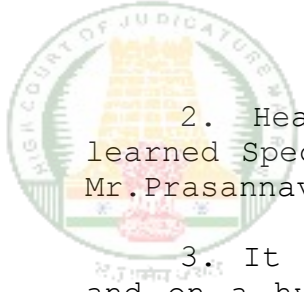
For Petitioner :Mr.K.Govindarajan
for E.Vijay Anand

For Respondents :Mr.M.Govindan,
Special Government Pleader for R1.
Mr.Prasanavinoth for R2.

ORDER

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

This writ petition is instituted calling in question the correctness of the proceedings dated 14th June 2016, passed by the Assistant Engineer, Public Works Department, Irrigation Section -II, Periyar Vaigai Basin Sub Division No.I, Madurai. By virtue of the proceedings, the petitioner has been directed to remove the encroachment within seven days, failing which, action would be taken against the petitioner and the encroachment would be removed at the cost of the petitioner.



2. Heard the learned Counsel appearing for the petitioner, the learned Special Government Pleader appearing for the first respondent and Mr. Prasannavinooth, learned Counsel appearing for the second respondent.

3. It is urged before us that there was no encroachment whatsoever and on a hypothetical basis that there was an encroachment, the present action has emanated. It was specifically urged before us by the learned Counsel for the petitioner that there is no channel whatsoever in existence and hence, the question of the petitioner or its members encroaching upon the land covered by any such non-existing channel would not simply arise at all.

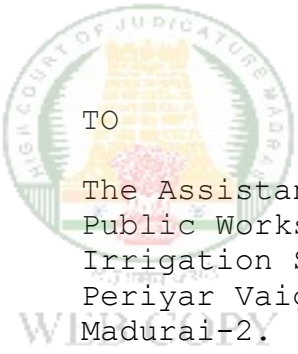
4. We are not adverting to various events, which had taken place in the past with regard to the controversy. But, however, the learned Special Government Pleader appearing for the first respondent has produced before us a copy of the communication, dated 05th April 2016, from the Tahsildar, Madurai North Taluk, Madurai, to the Assistant Engineer concerned. In paragraph '2' of the said communication, it is brought out that the Revenue/Survey Officials inspected the entire channel on 25.03.2016 and found that there are encroachments in two Survey Numbers, namely, S.Nos. 114 and 170. The Survey Officials have conducted an inspection and issued two separate Form-I Notices to the encroachers concerned. The Tahsildar has further stated that he has inspected the channel on 25th March 2016 along with his Survey Officials and found that the entire channel is in existence, but without proper maintenance and there is no encroachment, except in Survey Nos. 114 and 170, which have been indicated and coloured in the Field Map prepared. On page No. 4 of the paper book filed by the learned Special Government Pleader, the Field Map is also exhibited.

5. We are, therefore, of the view that the contention urged before us that there is no channel in existence, perhaps may be factually incorrect, which requires furthermore evidence to be collected to give a finding in that respect. In writ proceedings under Article 226 of the Constitution of India, collection of evidence, both oral and documentary is seldom resorted to and wherever the factual controversy exists and requires determination of correct facts, the party should approach the civil Court of competent jurisdiction. Since the controversy raised in the present writ petition is one such, we will leave it open to the writ petitioner to invoke the jurisdiction of the civil Court and in case, he has already invoked the jurisdiction of civil Court, he shall ensure that proper issues were framed therein, so that the party is at liberty to collect the evidence in that regard. Accordingly, this writ petition is disposed of. No costs. Consequently, the connected Miscellaneous petitions are closed.

Sd/
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar.



TO

The Assistant Engineer,
Public Works Department-WRO,
Irrigation Section No.II,
Periyar Vaigai Basin Sub-Division No.I,
Madurai-2.

+1CC to M/S.B.Prasanna Vinoth, Advocate, SR.No. 32622
+1CC to M/S.M.Vijay Anand, Advocate, SR.No. 32327
+1CC to the Special Government Pleader, SR.No. 32459

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gsr

AM/GSV.PM/SAR-III/29.06.2016/3P/5C