



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.06.2016

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO

and

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

Writ Petition (MD) No.11650 of 2016

AND

WMP(MD).No. 8924 of 2016

Thangaraj @ Thangadurai

... Petitioner

Vs.

1.The District Collector,
Trichy District.

2.The Assistant Engineer,
P.W.D, WRO,
Ariyar Basin Irrigation Section,
Thuraiyoor 621 010,
Trichy District.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records relating to the 2nd Respondent in his proceedings Lr.No.Koo.31A/2016/Oo.Po.(Thu) dated 15.06.2016 and quash the same.

For Petitioner

: Mr.T.K.Gopalan

For Respondents

: Mr.M.Govindan,

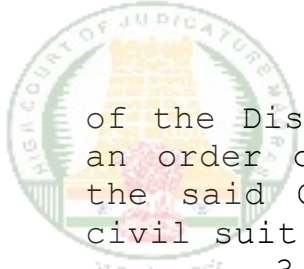
Special Government Pleader.

ORDER

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

This writ petition is instituted mounting a challenge to the orders passed by the second respondent, namely, the Assistant Engineer, Public Works Department, Ariyar Basin Irrigation Section, Thuraiyur, Trichy District on 15.06.2016, by which proceeding the writ petitioner was directed to remove the house and the cattle shed constructed by him on a piece of land lying in Survey No.66, Thiruthalaiyur village as the said land was falling within the tank bed, a water body. The writ petitioner was also threatened that any failure to remove the structures raised by him thereon will make the Department remove the same and recover the necessary expenditure incurred in that process from the writ

2.It is now brought to our notice that the same writ petitioner has earlier instituted O.S.No.258 of 2014 on the file



of the District Munsif Court, Thuraiyur and that Court has passed an order on 22.12.2015 returning the plaint on the premise that the said Court does not have the jurisdiction to entertain the civil suit.

3. We are a little surprised that the Civil Court has chosen to return the plaint. Normally, the jurisdiction of a Civil Court can be invoked unless the remedy sought for in the suit is prohibited by taking away the jurisdiction of the Civil Court by any statutory provision. Thus so long as the jurisdiction of the Civil Court is not barred by any statutory provision, the Civil Court is required to entertain every *lis*.

4. We have also noticed, during the course of the order passed, the learned District Munsif making a reference to the provision contained under Section 14 of the Land Encroachment Act, 1905 and then arriving at a conclusion that any proceeding or order passed by any Officer of the State Government under the said Act, shall not be called in question in any Court and on that basis, returned the plaint holding that the civil suit is not maintainable.

5. What has been urged in the plaint was the determination of the correctness of the notice issued in accordance with Form III, drawn as per Rule 6 of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007. Those Rules have been framed in exercise of power available to the State under Section 13 of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007. This latter Act of 2007 has not contained any prohibition, for a Civil Court to entertain any *lis*, similar to the provision contained under Section 14 of the Land Encroachment Act, 1905. Therefore, there is a clear error committed by the District Munsif Court, Thuraiyur in returning the plaint. But that is no reason for us to entertain this writ petition instituted by the writ petitioner. His remedy lies in carrying the matter by way of an appeal against the order passed by the District Munsif Court, Thuraiyur returning the plaint to the Court having necessary jurisdiction to entertain the appeal against an order passed under Order VII Rule 11 C.P.C. By not preferring an appeal, the petitioner instead of pursuing the remedy available to him in accordance with the Order XLIII Rule 1 C.P.C has followed the advice of the learned District Munsif, Thuraiyur and preferred this writ petition.

6. In that view of the matter, we cannot entertain the writ petition as the civil suit which is already instituted which is otherwise maintainable ought to have been dealt with by the Civil Court itself and hence, this writ petition cannot be entertained.

7. This apart, when a civil suit is instituted, both parties will have ample opportunity to lead evidence both oral and documentary and upon consideration of the matter, an appropriate finding of facts can be recorded. Whereas when disputed facts are raised in a writ petition like in the instant case which requires collection of evidence, it is only appropriate that a civil suit

should be entertained.

8. In this view of the matter, we dismiss the writ petition preserving liberty to the writ petitioner to pursue the appellate remedy available to him against the return of the plaint in O.S.No.258 of 2014 by the District Munsif Court, Thuraiyur. We are confident that the Appellate Court will entertain such an appeal and deal with it on merits, notwithstanding the fact that any such appeal has been preferred slightly beyond the period of limitation prescribed for preferring any such appeal. However, we make it very clear that if the petitioner prefers any such appeal within 30 days from today, the same may be entertained and heard on merits instead of rejecting the same only on the ground of delayed presentation of any such appeal. Hence, we direct the respondents not to take further action pursuant to the impugned notice dated 15.06.2016, for a period of 30 days. This order is passed after hearing the learned Special Government Pleader for the respondents. It is made clear that no part of the observations made by us for the purpose of dismissal of this case shall be construed or understood as expressing any opinion on the merits of the claim made by the plaintiff vis-a-vis the defendants in the suit. No costs. Consequently, W.M.P(MD)No.8924 of 2016 is closed.

Sd/-

Assistant Registrar(AS)

/TRUE COPY/

Sub Assistant RegistrarTo

- 1.The District Collector,
Trichy District.
- 2.The Assistant Engineer,P.W.D, WRO,
Ariyar Basin Irrigation Section,
Thuraiyoor 621 010,
Trichy District.

+1cc to M/S.P.T.S.NARENDRAVASAN,ADVOCATE, SR NO: 34199
+1cc to M/S.THE SPECIAL GOVERNMENT PLEADER, SR NO: 34442

sms

JA-DB-15.07.2016/3P:5C

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AND

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