

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2017

CORAM

THE HON'BLE Mr. JUSTICE M.M.SUNDRESH
and
THE HON'BLE Mr. JUSTICE M.SUNDAR

W.P.No.8993 of 2017

D.Subramanian

.. Petitioner

Vs.

1.The Secretary to the Government,
Public Works Department,
Secretariat, Fort St. George,
Chennai - 9.

2.The District Collector,
Tirupur District,
Office of the Collectorate,
Palladam Road,
Tirupur - 641 604.

3.The Executive Engineer,
Bhavani Sagar Dam Division,
Bhavani Sagar, Pin - 638 451.

4.The Commissioner,
Corporation of Tirupur,
Municipal Office Road,
Tirupur.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus directing the respondents to take appropriate action for removal of the illegal encroachment including the laying of mud road on the river bed of Nallar river in the stretch in between SF No.301 to 409 Athupalayam, Tirupur pursuant to the representation made to the second respondent on 05.12.2016.

For Petitioner : Mr.S.S.Swaminathan

For Respondents : Mr.T.N.Rajagopalan,
Govt. Pleader (I/c)
for R1 to R3
Ms.P.Shanthi for R4

ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

This public interest litigation has been filed seeking a direction to the respondents to take appropriate action on the illegal encroachment including the laying of mud road on the river bed of Nallar river in the stretch in between SF No.301 to 409 Athupalayam, Tirupur pursuant to the representation made to the second respondent on 05.12.2016.

2.Learned counsel appearing for the petitioner would submit that a mud road is being laid on the river bed without any permission and if the same is allowed to continue, it would result in inundation of the houses near the banks of the river.

3.Learned Government Pleader (I/c), by placing reliance upon the counter affidavit, would submit that the road is not used in a routine manner. It has been created for the purpose of maintaining the river apart from removing the trees viz., juliflora. He further submits that it is likely to be used when there is a congestion by way of traffic in the Corporation area.

4.Creating a road on the river bed either by the respondents or by a third party can never be permitted. Though it cannot be termed as an encroachment per se, we are more concerned with the nature of usage. Once the road is created, though not in the nature of a well developed tar road, consequence will be the same. The submission made that the mud road would be used only on occasions cannot be accepted. Once a road is formed, the respondents cannot stop the general public from using it.

5.In view of the above, the respondents are hereby directed to ensure that the mud road should not be used by the general public for any reason. We make it clear that the road can only be used by the respondents for certain contingencies such as maintaining the river and clearing the unwanted trees. Insofar as the encroachments on the banks of the river is concerned, considering the stand taken in paragraph 6 of the counter affidavit, the third respondent is directed to take appropriate action in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order, after due notice to the alleged encroachers.

6.With the above observation and direction, the writ petition stands disposed of. No costs.

sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

mmi

To

1.The Secretary to the Government,
Public Works Department,
Secretariat, Fort St. George,
Chennai - 9.

2.The District Collector,
Tirupur District,
Office of the Collectorate,
Palladam Road,
Tirupur - 641 604.

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Bhavani Sagar, Pin - 638 451.

4.The Commissioner,
Corporation of Tirupur,
Municipal Office Road,
Tirupur.

+ 1 CC TO Ms.P.Shanthi, Advocate sr.77476

+ 1 CC TO Govt. Pleader SR.76932

+ 1 CC TO MR.S.S.SWAMINATHAN, Advocate sr.76426

W.P.No.8993 of 2017

KJI [co]

RR 23/11/2017

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