

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.02.2017

Coram

The Hon'ble Mr.Justice T.Raja

Writ Petition No.14451 of 2016
and

W.P.No.2078 and 2017
and

W.M.P.Nos.12633 of 2016 and 2050 of 2017

Tmt.Kamatchi

...Petitioner in both W.Ps.

Vs.

1. The Block Development Officer,
(Village Panchayat)
Sathyamangalam Panchayat Union,
Sathyamangalam,
Erode District.
..... R-1 in both W.Ps.
2. The President,
Makkinangkombai Village Panchayat,
Makkinangkombai - 638 454,
Sathyamangalam Taluk,
Erode District.
...R-2 in W.P.No.14451 of 2016
3. The President,
Indiampalayam Village Panchayat,
Indiampalayam - 638 454,
Sathyamangalam Taluk,
Erode District.
...R3 in W.P.No.14451 of 2016
4. Makkinangkombai Village Panchayat,
Makkinangkombai - 638 454,
Sathyamangalam Taluk,
Erode District.
Rep.by its Special Officer.R-2 in W.P.No.2078 of 2017
5. Indiampalayam Village Panchayat,
Indiampalayam - 638 454,
Sathyamangalam Taluk,
Erode District,
Rep.by its Special Officer.R3 in W.P.No.2078 of 2017

Prayer in W.P.No.14451 of 2016 :

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records, pertaining to the order passed by the first respondent, in Na.Ka.No.1881/2015/A2, dated 16.03.2016, and the consequential order of the second respondent, dated 30.03.2016, and to quash the same, and further, to direct the second respondent to consider the grant of building plan submitted by the petitioner, relating to Door No.5/173, in S.F.No.234/12 of Makkinangkombai Village, Sathyamangalam Taluk, Erode District.

Prayer in W.P.No.2078 of 2017

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus, forbearing the respondents or any other persons, claiming through them from letting sewerage or drainage water in the petitioner's patta land at Door No.5/173 in S.F.No.234/12 of Makkinangkombai Village, Sathyamangalam Taluk, Erode District, without following due process of law.

In both W.Ps

For Petitioner :Mr.S.Kamadevan

For Respondents1 &2:Mr.S.V.Duraisolaimalai
Additional Government Pleader

For Respondent-3 :Mr.N.Manokaran

COMMON O R D E R

Writ Petition No.14451 of 2016 has been filed, challenging the orders passed by the first and second respondents, dated 16.03.2016, and 30.03.2016, for consequential direction, directing the second respondent to grant building plan permission to the petitioner for putting up construction in the property, bearing Door No.5/173, in S.F.No.234/12 of Makkinangkombai Village, Sathyamangalam Taluk, Erode District.

2. Writ Petition No.2078 of 2017 has been filed, praying for issuance of a Writ of Mandamus to forbear the respondents or any other persons, claiming through them from letting sewerage or drainage water to enter into the petitioner's property, without following due process of law.

3. Since the parties in both the Writ Petitions are one and the same, and the relief sought for interconnected, these Writ Petitions are taken up together and disposed of vide this common order.

4. The facts of the case, which led to the filing of these Writ Petitions are as follows:-

i) The petitioner is the absolute owner of the afore mentioned property. She and her husband are hailing from an oppressed community, and to eke out an existence, her husband is running a shop (viz., Saloon shop) on the margin side of the road, appurtenant to the petitioner's property. While so, some persons, at the instance of second and third respondent/Panchayats, attempted to interfere with the petitioner's peaceful possession of the property, and also attempting to divert the drainage water channel so as to enter into the petitioner's property. Hence, the petitioner filed a suit in O.S.No.202 of 2010, on the file of the District Munsif Court, Sathyamangalam/trial Court, seeking for the relief of permanent injunction, restraining the defendants 3 to 7, which includes respondents 1 and 2 in these Writ Petitions, from interfering with her peaceful possession of the suit property. During the pendency of the suit, a complaint was lodged before the Police, alleging that the petitioner had blocked the drainage water channel. However, the said case ended in acquittal. In the meanwhile, the trial Court, without properly appreciating the evidence adduced before it, dismissed the suit, by a judgment and decree, dated 17.03.2014. Aggrieved over the said judgment, petitioner filed first Appeal before the learned Sub Court, Sathymangalam/Lower Appellate Court, in A.S.No.30 of 2014, and the Lower Appellate Court, vide judgment and decree, dated 07.10.2015, allowed the Appeal, set aside the judgment and decree passed by the trial Court, and decreed the suit.

ii) Since the existing saloon shop is in dilapidated condition, petitioner, desired to improve the same by putting up a construction, for which purpose, she has to obtain building plan permission. Therefore, she submitted a representation, dated 08.03.2016, enclosing the rough sketch of the building plan prepared by a qualified Engineer to the second respondent, and requested for grant of building plan permission. The second respondent, President of Makkinangkombai Village Panchayat, pursuant to the impugned order, dated 16.03.2016 passed by the first respondent/Block Development Officer, rejected the prayer sought for by the petitioner, by order, dated 30.03.2016 (which is also impugned herein) . The reason, which formed the basis for passing the impugned order by the first respondent is due to the objections raised by the third respondent/Panchayat, dated

07.03.2016, wherein, it is stated that, against the judgment passed by the Lower Appellate Court, Second Appeal has been preferred before this Court, and till an order of interim injunction is obtained in the Second Appeal, the representation made by the petitioner for grant of building plan permission shall be kept in abeyance.

iii) Challenging the aforesaid impugned orders passed by the first and second respondents, dated 16.03.2016 and 30.03.2016 respectively, and to forbear the respondents from letting sewerage or drainage water into the petitioner's property, the present two Writ Petitions have been filed.

5. Mr.S.Kamadevan, the learned counsel appearing for the petitioner would submit that, admittedly, petitioner is the owner of the property in question. Even as per the Revenue record, patta stands in her name. While that being so, second respondent cannot reject the petitioner's prayer, for grant of building plan permission. The learned counsel would further submit that, in the counter affidavit filed by the first and second respondents, more particularly, in para Nos.5 and 8, they themselves have clearly stated that the property, measuring an extent of 10.00.49 ares, comprised in S.F.No.234/12 of Makkinangkombai Village Panchayat, Sathyamangalam Taluk, Erode District, belongs to the petitioner. Therefore, when it is evidently clear that the petitioner is the absolute owner of the property, she is entitled to get the building plan permission for the purpose of putting up construction in her property.

6. The learned counsel for the petitioner would further submit that the stand of the third respondent that, against the decreeing of the suit by the Lower Appellate Court, Second Appeal has been filed and the same was allowed by this Court, and the matter has been remanded to the Lower Appellate Court, for fresh consideration and till the suit attains finality, the petitioner cannot claim ownership over the property, as a matter of right on the basis of the patta issued in her favour, is not a valid. The learned counsel would further submit that the first respondent/Block Development Officer has no jurisdiction to pass such an order, directing the second respondent not to grant planning permission, and only the second respondent is the competent authority to consider the petitioner's prayer. Therefore, the learned counsel contended that the impugned order passed by the first respondent and the consequential order of the second respondent are not tenable and calls for interference of this Court.

7. The learned counsel for the petitioner would furthermore submit that, if it is the case of the respondents

that, in case, building plan permission is granted, the petitioner would put up construction in the property, for which purpose, foundation would be laid by digging up the soil, due to which, the drainage water course running beneath the petitioner's property would get disconnected, and there would be blockage of drainage, resulting in stagnation of sewage water, and it would cause prejudice to the villagers of the third respondent/Panchayat, then, it is for the respondents to acquire the land for the formation of sewerage line for public purpose, by resorting to a procedure prescribed by a statute, and the petitioner cannot be put at a disadvantageous position, when, she being the owner of the property, and hailing from oppressed community. The learned counsel would further submit that the right to property is not only a constitutional right, or a statutory right, but also a human right. In support of the said contention, he placed reliance on the judgment rendered by the Hon'ble Division Bench of this Court, in the case of (Tukaram Kana Joshi and others Vs. M.I.D.C. and others) reported in (2013) 2 CTC 222. The learned counsel, therefore, prays for quashing the impugned orders.

8. Mr.S.V.Duraisolaimalai, learned Additional Government Pleader, while reiterating the averments set out in the counter affidavit filed by the respondents 1 and 2 would submit that, though the petitioner claims that, she is the absolute owner of the property in question, and prays for grant of building plan permission to put up construction, the approval cannot be granted for a reason that, if building plan permission is granted, obviously, petitioner would put up construction in the property, due to which, the drainage water course running beneath the petitioner's property will be cut off, and consequently, the drainage water course will get blocked, and the sewage water that got discharged from the houses of the third respondent/Panchayat would get obstructed, resulting in stagnation of sewage water, which would not only affect the health of the villagers of third respondent/Panchayat, but would also cause harm to the petitioner. Hence, the respondents 1 and 2, taking into consideration the welfare of the public belonging to both the second and third respondent/Panchayats, rejected the petitioner's prayer.

9. The learned Additional Government Pleader, further pointed out that the petitioner, suppressed the existence of drainage/water course, which is running beneath her property, and obtained patta in her favour, and therefore, steps have been taken by the second respondent/Panchayat to approach the Revenue Authorities so as to cancel the patta issued to the petitioner in respect of the S.No.234/12 and to convert the same into a poromboke land.

10. Coming to the contention raised by the learned counsel for the petitioner that the first respondent has no jurisdiction to pass such an order, prohibiting the second respondent from granting building plan approval to the petitioner and the competent authority to consider the petitioner's prayer, is the second respondent, the learned Additional Government Pleader would submit that the first respondent is not only a monitoring authority, but, he is also a Special Officer for both the second and third respondent/Panchayats, and bearing in mind, the welfare of the villagers of both the Panchayats, passed such an order and the same requires no interference. Thus, the learned Additional Government Pleader justified the impugned orders passed by the respondents 1 and 2 and prays for dismissal of the Writ Petitions.

11. Mr.N.Manokaran, the learned counsel for the third respondent/Panchayat, while reiterating the averments made in the counter affidavit filed by the third respondent would submit that, the property was a Government Poramboke Land, and it has been classified as "Harijan Natham and people of Harijan Community were in possession and occupation of the said property for years together. In the said land, already there existed a natural drainage course from time immemorial, and suppressing the same, petitioner has obtained patta in her name by misleading the revenue officials, and has erected four concrete pillars over the drainage water channel and constructed the shop. Now, the sewerage water that got discharged from various houses belonging to the third respondent/Panchayat are being obstructed by the petitioner's shop, since the said drainage water course is the only channel available to drain the sewage and rain water collected from the third respondent/Panchayat. The learned counsel would further submit that respondents 1 and 2 are also duty bound to regulate the drainage water, so as to maintain the hygienic condition, surrounding the area, and that is the reason, why, the impugned orders have been passed, and hence, the petitioner, cannot challenge the correctness of the same. Adding further, he would submit that mere grant of patta in favour of the petitioner, per se, will not confer absolute ownership/title over the property, as the petitioner has obtained the patta by suppressing certain materials facts.

12. The learned counsel for the third respondent would furthermore submit that, though the petitioner claims that she is the owner of the property and also filed a suit and the same has also been decreed by the Lower Appellate Court, against the judgment of the Lower Appeal Court, the third respondent preferred Second Appeal, and the same was allowed and the matter has been remanded to the Lower Appeal Court for fresh consideration. Therefore, he would contend that, when the civil suit is pending, preliminary proceedings, in the form of Writ

Petitions are not maintainable. The learned counsel, therefore, submitted that the impugned orders requires no interference and prays for dismissal of the Writ Petitions.

13. Heard Mr.S.Kamadevan, the learned counsel appearing for the petitioner, Mr.S.V.Duraisolaimalai, learned Additional Government Pleader for first and second respondents, Mr.N.Manokaran, the learned counsel for the third respondent/Panchayat, and perused the counter affidavits filed by respondents 1 and 2, and third respondent respectively and the additional typed set of papers filed in support of Writ Petition No.14451 of 2016.

14. This Court hardly finds any material on the stand taken by the respondents 1 and 2. It is an undisputed fact that the petitioner is the absolute owner of the property. In fact, in the counter affidavit filed by the first and second respondents, there is an admission that the property, measuring an extent of 0.00.49 ares, comprised in S.F.No.234/12 of Makkinangkombai Village Panchayat, Sathyamangalam Taluk, Erode District, belongs to the petitioner, as per the revenue record. When they themselves have admitted the petitioner's ownership over the subject property, I do not find any justification on their part, in rejecting the request of the petitioner for building plan permission.

15. As rightly pointed out by the learned counsel for the petitioner, if respondents 1 and 2 are of the view that the grant of building plan permission to the petitioner would cause serious prejudice to the villagers of the third respondent/Panchayat, as it would disconnect the drainage course running beneath the petitioner's land, and would block the drainage water course, then, it is for respondents 1 and 2 to seek appropriate remedy in the manner known to law, by invoking land acquisition proceedings, and on that ground, the petitioner cannot be deprived of her right over the property. In fact, the Hon'ble Supreme Court, in the decision rendered in the case of Tukaram Kana Joshi (referred to supra), relied upon by the learned counsel for the petitioner held that, 'right to property is not only a constitutional right, or a statutory right, but also a human right' and it would be worthwhile to quote the relevant para from the said decision, which is extracted herein below:-

"The appellants were deprived of their immovable property in 1964, when Article 31 of the Constitution was still intact and the right to property was a part of fundamental rights under Article 19 of the Constitution. It is pertinent to note that even after the Right to Property seized to be a Fundamental

Right, taking possession of or acquiring the property of a citizen most certainly tantamounts to deprivation and such deprivation can take place only in accordance with the "law", as the said word has specifically been used in Article 300-A of the Constitution. Such deprivation can be only by resorting to a procedure prescribed by a statute. The same cannot be done by way of executive fiat or order or administration caprice. In *Jilubhai Nanbhai Khachar, etc. etc. v. State of Gujarat & Anr.*, AIR 1995 SC 142, it has been held as follows: -

"In other words, Article 300-A only limits the power of the State that no person shall be deprived of his property save by authority of law. There is no deprivation without due sanction of law. Deprivation by any other mode is not acquisition or taking possession under Article 300-A. In other words, if there is no law, there is no deprivation."

7. The right to property is now considered to be, not only a constitutional or a statutory right, but also a human right. Though, it is not a basic feature of the Constitution or a fundamental right. Human rights are considered to be in realm of individual rights, such as the right to health, the right to livelihood, the right to shelter and employment etc. Now however, human rights are gaining an even greater multi faceted dimension. The right to property is considered, very much to be a part of such new dimension. Vide: *Lachhman Dass v. Jagat Ram & Ors.* (2007) 10 SCC 448; *Amarjit Singh & Ors. v. State of Punjab & Ors.* (2010) 10 SCC 43; *Narmada Bachao Andolan v. State of Madhya Pradesh & Anr.* AIR 2011 SC 1989; *State of Haryana v. Mukesh Kumar & Ors.* AIR 2012 SC 559 and *Delhi Airtech Services Pvt. Ltd. v. State of U.P & Anr.* AIR 2012 SC 573) "

16. In view of the above, reverting to the case on hand, it is seen that, the first and second respondents, in their counter affidavit, admitted the fact that the petitioner is the absolute

owner of the property in question and patta has been issued in her name. Therefore, they cannot refuse to grant building plan permission for putting up construction.

17. For the reasons stated herein above, this Court deems fit that impugned orders are untenable and liable to be set aside. Accordingly, the order passed by the first respondent, dated 16.03.2016, and the consequential order of the second respondent, dated 30.03.2016 are set aside, and W.P.No.14451 of 2016 is allowed, and the second respondent, viz., President, Makkinangkombai Village Panchayat, Makkinangkombai, Sathyamangalam, Erode District, is directed to grant building plan permission in favour of the petitioner, within a period of four weeks from the date of receipt of a copy of this order.

18. Insofar as other Writ Petition is concerned, viz., W.P.No.2078 of 2017, since W.P.No.14451 of 2016 is allowed, as stated above, no orders are required to be passed in W.P.No.2078 of 2017. After the above order was dictated, the learned counsel for the petitioner submitted that the petitioner would withdraw the suit filed by her. The said submission is recorded.

19. In the result, W.P.No.14451 and 2016, is allowed on the above terms and W.P.No.2078 of 2017 is closed, as indicated above. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

सत्यमेव जयते

To

1. The Block Development Officer,
(Village Panchayat)
Sathyamangalam Panchayat Union,
Sathyamangalam, Erode District.
2. The President,
Makkinangkombai Village Panchayat,
Makkinangkombai - 638 454,
Sathyamangalam Taluk, Erode District.

3. The President,
Indiampalayam Village Panchayat,
Indiampalayam - 638 454,
Sathyamangalam Taluk, Erode District.

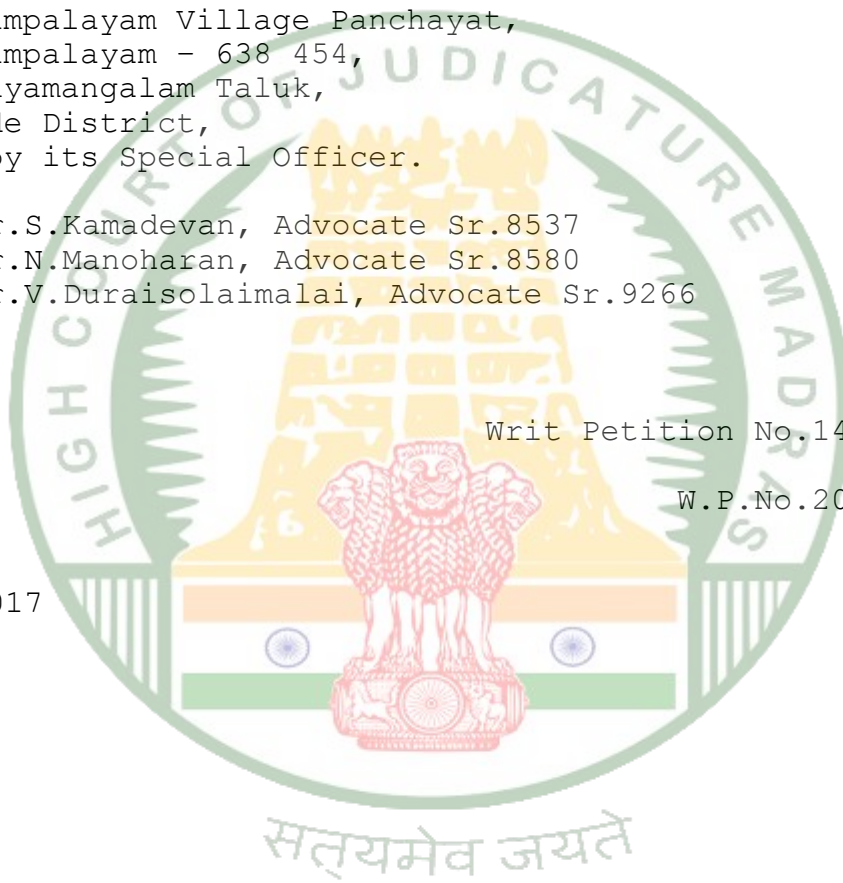
4. Makkinangkombai Village Panchayat,
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Erode District.
Rep.by its Special Officer.

5. Indiampalayam Village Panchayat,
Indiampalayam - 638 454,
Sathyamangalam Taluk,
Erode District,
Rep.by its Special Officer.

+1cc to Mr.S.Kamadevan, Advocate Sr.8537
+1cc to Mr.N.Manoharan, Advocate Sr.8580
+1cc to Mr.V.Duraisolaimalai, Advocate Sr.9266

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and
W.P.No.2078 and 2017

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