

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No. 34909 of 2013
M.P.No1 of 2013 & M.P.No.1 of 2014

M.Paramasivam

.. Petitioner

Vs.

- 1.The Executive Engineer,
Major Project Division,
Tamil Nadu Water Supply and Drainage Board,
Suramangalam, Salem-5, Salem District.
- 2.The Assistant Executive Engineer,
Tamil Nadu Water Supply and Drainage Board,
Attur, Salem District.
- 3.The Tahsildar, Gangavalli Taluk,
Salem District.

.. Respondents

(The 3rd Respondent is impleaded suo moto,
as per the order of this Court, dated 06.01.2017)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus forbearing the respondents from erecting water pipelines or digging the land in the petitioner's property situated in Survey No.200/1A, Gramanatham, Vellaiyur Village and Post, Gangavalli Taluk, Salem District - 636 1169 consisting of 5 cents North by Survey No.200/5, South by Road, East by Poomalai and West by Road, except due process of law.

For Petitioner : Mr.A.Rajesh Kanna
For RR 1 and 2 : Mrs.S.Thamilzharasi
For R3 : Mr. S.Diwakar,
Special Govt. Pleader

O R D E R

Heard Mr.A.Rajesh Kanna, the learned counsel appearing for the petitioner, Mrs.S.Thamilzharasi, learned counsel appearing on behalf of the respondents 1 and 2 and Mr. S.Diwakar, learned Special Govt. Pleader, appearing on behalf of the 3rd respondent.

2. The petitioner has come up with the present writ petition praying to forbear the respondents from erecting water pipelines or digging the land in the petitioner's property situated in Survey No.200/1A, Gramanatham, Vellaiyur Village and Post, Gangavalli Taluk, Salem District - 636 1169 consisting of 5 cents North by Survey No.200/5, South by Road, East by Poomalai and West by Road, except by due process of law .

3. According to the learned counsel for the petitioner, in the above said poramboke land, the petitioner is in absolute possession and enjoyment of the property. One Singaravel Udaiyar, has put up a small hut in the above said Government poramboke land and lived there till his death on 12.06.1981. After his death, his wife Soundarammal inherited the property, eventually she died on 24.09.1984. There was no legal heir to Singaravel Udaiyar and his wife Soundarammal. In fact the petitioner is the only son of Marudhamuthu Udaiyar, who is brother of Singaravel Udaiyar. Hence, the petitioner is the only legal heir of Singaravel Udaiyar. The petitioner has paid necessary property tax at Tahsildar, Attur.

4. On 22.02.2013 at about 3.00 pm, when the Tahsildar attempted to evict the petitioner from the premises, the petitioner submitted xerox copy of documents to the Tahsildar showing the possession of the property and he also gave representation to the District Collector, not to evict him from his property. The action of the Tahsildar without issuing any notice and attempting to evict the petitioner from the property, is illegal and against law. Hence, the petitioner has filed Writ Petition in W.P.No.7045 of 2013 seeking for mandamus, forbearing the respondents from forcibly evicting the petitioner from his possession and enjoyment of the property. On 21.03.2013, a Division Bench of this Court disposed of the said Writ Petition with a direction that the respondent can proceed against the petitioner for eviction by procedures in accordance with Tamil Nadu Land Encroachment Act, 1905.

5. The respondents, without following the due procedure of law, with the help of rowdy elements and panchayat elements, are digging the land and trying to put up construction. Hence, the petitioner has filed Contempt Petition before this Court in Contempt Petition No.2838 of 2013, in which this Court by an order dated 22.07.2014 has observed as follows:

....4. We do not find any merit in this Contempt Petition. In the counter affidavit filed by the second respondent, it has been stated that as there was no encroachment in survey No.200/1A, no action has been taken against the petitioner. The petitioner is owning the patta lands in survey

No.2005/5. It is further stated that if any encroachment is found to be made by the petitioner, then action should be taken only in accordance with law.

5. In view of the said submission, we are inclined to close this contempt petition and the same is closed. However, insofar as the fourth respondent is concerned, it is for the petitioner to work out the remedy against the said authority, if any attempt is made to dispossess him in the manner known to law.....

6. Pursuant to the said order, the petitioner filed the present Writ Petition for a Writ of Mandamus seeking to forbear the respondents from erecting water pipelines or digging the land in the petitioner's property. In view of the said prayer, the learned counsel for the petitioner submitted that the respondents may be directed not to evict the petitioner without due process of law.

7. The learned counsel for the respondents has filed a detailed counter, wherein it is submitted that for the benefit of Attur, Narasingapuram Municipality, over head tank was proposed for supplying drinking water. The TWAD Board has commenced the work on 01.04.2012 and about 94% of work has been completed before 06/2014. There was no encroachment found in the aforesaid survey number, when the excavation was started in the vacant site on 13.03.2013. Hence, the present Writ Petition is liable to be dismissed.

8. According to the learned counsel for the petitioner, he is in possession of the property situated in Survey No.200/1A, in Gangavalli Taluk, Salem District. Therefore, earlier he filed the Writ Petition before this Court in W.P.No.7045 of 2013 forbearing the respondents from forcibly evicting the petitioner from his possession and enjoyment of the property. The Division Bench of this Court allowed the Writ Petition with a direction that the respondent can proceed against the petitioner for eviction by procedures in accordance with Tamil Nadu Land Encroachment Act, 1905. Thereafter, the petitioner has filed Contempt Petition 2838 of 2013, which was closed with the observation that insofar as the fourth respondent is concerned, it is for the petitioner to work out the remedy against the said authority, if any attempt is made to dispossess him in the manner known to law.

9. The learned counsel for the petitioner vehemently argued that the petitioner is in possession of the said property, therefore, the respondents have to follow the proceedings as contemplated under law. However, without following the due process of law, the petitioner cannot be

dispossessed from the said property. However, the petitioner is not in a position to submit any document before this Court to prove that he is possession of the property. The petitioner has not produced House Tax receipt or any other document to prove that he is in possession. However, as directed by the Division Bench, no notice has been issued and opportunity has to be given to the petitioner. The possession is disputed by both the parties.

10. In the light of the earlier orders of this Court, by consent of both the parties, in order to meet the ends of justice, this Court is inclined to pass the following orders:

- i) the petitioner shall approach the third respondent Tahsildar, Gangavalli Taluk and submit his representation, within two weeks from the date of receipt of a copy of this order.
- ii) The third respondent, Tahsildar is directed to issue notice to the petitioner as well as the respondents 1 and 2 within a period of two weeks from the date of receipt of copy of the petitioner's representation for providing opportunity.
- iii) Thereafter, the petitioner shall make his objections and produce necessary documents before the third respondent within a period of four weeks.
- iv) The respondents 1 and 2 shall also submit their reply for the objections of the petitioner.
- v) Thereafter, the third respondent-Thasildar is directed to pass final orders within a period of six weeks time. Till such time, the Status quo as on today, shall be maintained by the parties.

11. The Writ Petition is disposed of with the above directions. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

- 1.The Executive Engineer,
Major Project Division,
Tamil Nadu Water Supply and Drainage Board,
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2.The Assistant Executive Engineer,
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3.The Tahsildar, Gangavalli Taluk,
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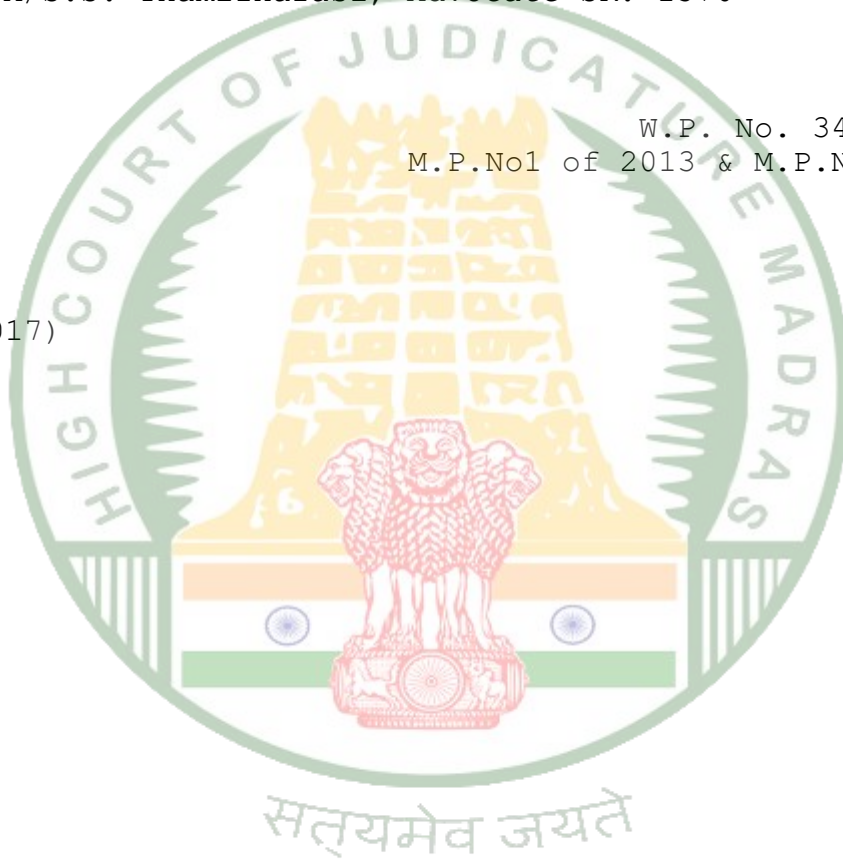
+1cc to Government Pleader, High Court, Madras,2068

+1cc to M/S.A. Rajesh Kanna, Advocate SR. 1423

+1cc to M/S.S. Thamizharasi, Advocate SR. 1376

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NRI (CO)
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