

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2017

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

W.P.No.12995 of 2003

and

W.P.M.P.Nos.16295 and 16296 of 2003

Loyal Textile Mills Limited,
21/4, Mill Road,
Kovilpatti-628 501,
rep.by its Deputy General Manager(Finance) [Petitioner]

Vs

- 1.The Commissioner,
Kovilpatti Municipality,
Kovilpatti-628 501.
- 2.The Superintendent of Police,
Tuticorin District.
- 3.Vimala Rani
- 4.S.Inasimuthu
- 5.S.Vallinayagam
- 6.S.Subbiah [Respondents]

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus directing the first and second respondents to compensate the petitioner in a sum of Rs.2.5 lakhs due to their illegal act of demolition of the petitioner's wall.

For Petitioner : Mr.R.Parthiban
For Respondents : Mr.P.Karthikeyan,
Government Advocate for R1 and R2

O R D E R

The petitioner is the owner of the land in Survey Nos.166, 172/2, 173 to 178 and 170 of Inam Kovilpatti Village. It is his case that he had built a compound wall on his land which was illegally demolished by the respondents for which he has filed the present writ petition for a Mandamus directing the first and

second respondents to grant compensation of Rs.2.5 lakhs for the demolition of his compound wall.

2. Admittedly, there is a pathway in the land of the petitioner which was used by the public for over a very long time. Since the petitioner was preventing free ingress and egress for the members of the public, a suit in O.S.No.301 of 1985 was filed by the respondents 4 to 6 and others before the District Munsif Court, Kovilpatti for an injunction restraining the petitioner from interfering with their free usage of the said pathway. The said suit was allowed by the District Munsif by holding that though the pathway is not in the poramboke land, but it is in the patta land of the petitioner, yet, it would be used by the public and their right to use the pathway cannot be prevented by the petitioner. The petitioner filed A.S.No.130 of 1998 before the Subordinate Court, Kovilpatti, which was dismissed on 28.02.2003, against which the petitioner has filed Second Appeal No.665 of 2003 and the same is pending before the Madurai Bench of Madras High Court.

3. Mr. R. Parthiban, learned counsel for the petitioner submitted that in the teeth of the findings by the Court below, the very act of demolition of the compound wall by the authorities is an illegal act and that therefore they are liable to pay compensation as demanded in the writ petition.

4. The learned Government Advocate appearing for respondents 1 and 2 strongly refuted the said submission of the learned counsel for the petitioner.

5. This Court has given its anxious consideration to the rival submissions.

6. The fact remains that the District Munsif Court, Kovilpatti had granted injunction in favour of the local residents and against the petitioner and the same was confirmed by the Subordinate Judge, Kovilpatti, which is of course pending in second appeal before this Court. The allegation of the petitioner that on 01.04.2003, the Municipality and others razed the compound wall illegally, is a disputed question of fact which cannot be decided in writ proceedings without recording evidence. Therefore, no compensation can be ordered as prayed for by the petitioner.

7.Hence, the writ petition is dismissed with liberty to the petitioner to work out his remedy in the manner known to law. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

KM
To

1.The Commissioner,
Kovilpatti Municipality,
Kovilpatti-628 501.

2.The Superintendent of Police,
Tuticorin District.

+1cc to Mr.R. Parthiban, Advocate, S.R.No.6319

sr(CO)
md(15/02/2017)

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