BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **09.06.2017**
CORAM:
THE HONOURABLE MR.JUSTICE **T.S.SIVAGNANAM**
AND
THE HONOURABLE MR.JUSTICE **C.V.KARTHIKEYAN**
W.P.[MD].No.10835 of 2017
and
W.M.P(MD).No.8256 of 2017

Sankar @ Jaisankar : Petitioner

Vs.

1.The District Collector,
Dindigul District.

2.The Revenue Divisional Officer,
Dindigul District.

3.The Tahsildar,
Nilakottai Taluk,
Dindigul District.

4.The Commissioner,
Nilakottai Panchayat Union,
Nilakottai, Dindigul District.

5.The Block Development Officer (Village Panchayats),
Nilakottai Taluk,
Dinidgul District.

6.The Revenue Inspector,
Nilakottai Taluk,
Dindigul District.

7.The Executive Officer,
Ammayanayakkanur Town Panchayat,
Nilakottai Taluk,
Dindigul District.

8.The Deputy Superintendent of Police,
Nilakottai Taluk,
Dindigul District.

9.The Inspector of Police,
Ammayanayakkanoor Police Station,
Dindigul District.

10.P.Krishnan : Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for records from the seventh respondent relating to the impugned order dated 06.06.2017 in Na.Ka.No.130/2017/A1 and quash the same.

For Petitioner : Mr. T.R.Jeyapalam
For Respondent No.1 to 9 : Mr.T.S.Mohammed Mohideen Addl. Government Pleader
For Respondent No.10 : Mr.Niranjen S.Kumar

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O R D E R

[Order of the Court was delivered by T.S.SIVAGNANAM, J.]

Heard Mr.T.R.Jeyapalam, learned counsel appearing for the petitioner, Mr.T.S.Mohammed Mohideen, learned Additional Government Pleader appearing for the respondents 1 to 9 and Mr.Niranjen S.Kumar, learned counsel appearing for the tenth respondent. With the consent of all the counsels, the Writ Petition itself is taken up for final disposal.

2. The present Writ Petition is a classic example as to how a single cause of action can result in multiplicity of proceedings. Essentially, the problem arose on account of an order passed in W.P.(MD)No.23948 of 2016 filed by the tenth respondent herein, which was disposed of at the admission stage, by order dated 14.12.2016, without notice to the respondents 9 and 10, one of whom is the petitioner in this Writ Petition.

3. Though the ultimate direction issued by the Division Bench is an innocuous direction, by directing the concerned respondents to consider the representation dated 24.10.2016 and pass suitable orders, after giving opportunity to the respondents 9 and 10 (present writ petitioner and his brother), the authorities, more particularly, the seventh respondent has misconstrued the scope of the direction issued by the Division Bench of this Court. This has necessitated the petitioner to file a petition to recall the order dated 14.12.2016 and to file a Writ Petition in W.P.(MD)No.10356 of 2017, challenging the notice issued by the seventh respondent dated 22.05.2017 and thereafter, since another proceedings was issued by the seventh respondent, requesting for police protection to remove the alleged encroachment by notice dated 06.06.2017, the petitioner was constrained to challenge the said notice in this Writ Petition. The allegation made by the tenth respondent in this Writ Petition in his Public Interest Litigation in W.P.(MD)No.23948 of 2016 is that the petitioner and his brother have obliterated a channel. As pointed out by us earlier, though the relief granted by the Division Bench is, in fact, an innocuous relief, nevertheless, the Court has recorded the submission of the petitioner in the body of the order. This presumably has been misinterpreted by the seventh respondent to be a finding recorded by the Court, as a result of which, the seventh respondent has issued two proceedings dated 22.05.2017 and 06.06.2017, which have

been challenged by the petitioner. However, the Revenue Authority, who is the competent authority to consider as to whether there has been any encroachment or not has not been swayed by any of the observations made in the order of the Court, but, has rightly invoked the provisions of the Tamil Nadu Land Encroachment Act, 1905, [for brevity, "the Act"] and issued a notice under Section 7 of the Act, calling upon the petitioner to submit his objections on or before 22.05.2017.

4. The learned counsel for the petitioner has drawn our attention to the objection submitted by the petitioner dated 22.05.2017, which is stated to have been received by the office of the Revenue Authorities, vide postal acknowledgment card dated 23.05.2017. Thus, as-on-date, the Revenue authorities have not adjudicated upon the correctness of the proposal made in the notice issued under Section 7 of the Act and the matter is pending. Parallely, the seventh respondent has proceeded to issue notices dated 22.05.2017 and 06.06.2017.

5. In our considered view, the seventh respondent is not the competent authority to decide as to whether there has been encroachment or not in a public road or Odai and the seventh respondent has exceeded his jurisdiction and issued notice dated 22.05.2017 and 06.06.2017. Therefore, the notices dated 22.05.2017 and 06.06.2017 have to be necessarily set aside.

6. The apprehension of the petitioner is that the Revenue Authorities will be swayed by the observations contained in the order dated 14.12.2016 made in W.P.(MD)No.23948 of 2016. Though this apprehension may be a bit reasonable, but not wholly tenable as the Revenue Authorities have been directed only to look into the representation of the tenth respondent herein and pass suitable orders, after giving opportunity to the writ petitioner herein and his brother. Therefore, they have to go by the records, conduct a survey of the property and then, to take a decision by following the procedure contemplated under the provisions of the Act. The objections given by the petitioner are still pending consideration of the Revenue Authorities. Therefore, the following order would meet the ends of justice.

7. As we have already concluded, the seventh respondent has exceeded his jurisdiction by issuing notices dated 22.05.2017 and 06.06.2017 and therefore, those notices are set aside and are held to be unenforceable. Likewise, the Revenue Authorities are directed to independently consider the objections, without being influenced by any of the observations made in the order in W.P.(MD)No.23948 of 2016, dated 14.12.2016 and conduct a thorough enquiry and re-survey the property, in the presence of the petitioner and his brother and the tenth respondent herein and the other land owners, who may be owning lands by the side of odai or road (Vandi Pathai) and after affording full and effective

opportunity to all the parties concerned, pass a reasoned order on merits and in accordance with law. Till a decision is taken by the Revenue Authorities, Status-quo, which is prevailing as-on-date, shall be maintained. The above direction shall be complied with by the authorities concerned within a period of thirty days from the date of receipt of a copy of this order.

8. The Writ Petition stands disposed of on the above terms. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(RTI)

/ True Copy /

Sub Assistant Registrar(C.S.)

TO
1.The District Collector, Dindigul District.

2.The Revenue Divisional Officer, Dindigul District.

3.The Tahsildar, Nilakottai Taluk,Dindigul District.

4.The Commissioner,
Nilakottai Panchayat Union, Nilakottai, Dindigul District.

5.The Block Development Officer (Village Panchayats),
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8.The Deputy Superintendent of Police,
Nilakottai Taluk, Dindigul District.

9.The Inspector of Police,
Ammayanayakkanoor Police Station, Dindigul District.

+1 CC TO MR.T.R.JEYAPALAM, ADVOCATE,SR NO.59509
+1 CC TO MR.NIRANJAN S.KUMAR, ADVOCATE,SR NO.59451
+1 CC TO SPECIAL GOVERNMENT PLEADER SR NO.59765

MR/SSS/NB
MAS/JC/SAR1:13.06.2017:4P-13C

ORDER MADE IN
W.P.[MD].No.10835 of 2017
09.06.2017