

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.03.2018

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE Mr. JUSTICE S.VAIDYANATHAN

W.P.No.3494 of 2018

Baraneeswaran

.. Petitioner

Vs.

1. The District Collector,
Erode District
Erode

2. The Deputy Director of Town and
and Country Planning,
Salem Region,
No.6, Sannathi Street,
Subramani nagar,
Salem - 636 005

3. The Executive Officer,
Anthiyur Town Panchayat,
Anthiyur,
Erode District

4. Santhakumari

..Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Mandamus directing the Respondents 1 to 3 to remove the encroachments made by the 4th Respondent on the water channel in Survey No.1313/2 situated at Palaniappa Street, 2nd Cross, Thavuttupalayam, Anthiyur Village & Taluk, Erode District within a time frame.

For Petitioner : Mr.R.Arundattan

For Respondents: Mr.A.N.Thambidurai for R1 to R3
Special Government Pleader
Mr.E.P.Senniyangiri for R4

O R D E R

[Order of the Court was made by M.VENUGOPAL, J.]

Heard the Learned Counsel for the Petitioner, the Learned Special Government Pleader for the Respondents 1 to 3 and the Learned Counsel for 4th Respondent. No counter is filed by the

2. According to the Petitioner, he has purchased the plot bearing No.10, Palaniappa street, Cross 2, Thavuttupalayam, Anthiyur Taluk, Erode District and peacefully residing. Furthermore, he is in enjoyment and possession of the subject property from the date of his purchase and nine years ago, the 4th Respondent has purchased a Plot adjacent to house in Survey No.1313/2, which is situated on the southern side of his site. As a matter of fact, the property purchased by the 4th Respondent measuring 36x121 ¼ feet. The 4th Respondent had constructed three floored building with a water head tank on the 4th Floor and there is a seven feet wide and 121 ¼ feet length water channel in between the southern side of Petitioner's property and northern side of the property of the 4th Respondent.

3. The Learned Counsel for the Petitioner contends that during the rainy season, the street water will flow through the Petitioner's channel. There is no stagnation of rainwater, as the rain water flows out through the channel without any hindrance to any one. Furthermore, the water channel should not be blocked or damaged by anyone else. Apart from that, if an individual damaged or blocked the water channel nearby the Petitioner's property, the other nearby habitats including the encroacher will be flooded with water, which will be dangerous for them to live and also it will cause major health threats. All of them residing in the street are depending upon the water channel for the proper disposal of the rain water.

4. The Learned Counsel for the Petitioner submits that the Petitioner had submitted a representation on 04.11.2017 before the Respondents 1 to 3 to remove the encroachments made by the 4th Respondent in Water Channel situated in Survey No.1313/2, since the Respondents had not taken any action to remove the encroachments, inspite of several reminders, the present Writ Petition is filed by the Writ Petitioner seeking for passing of an order to remove the encroachment made upon the afore stated water channel in Survey No.1313/2.

5. Per contra, it is the submission of the Learned Special Government Pleader appearing for the Respondents 1 to 3 that the Resurvey No.1313/2 in Anthiyur Circle, Anthiyur A Village, was inspected on site by the Revenue Department Village Administration Officer and the Land Surveyor, the aforestated Re-survey No.1313/2 in Ryotwari Classification was registered to an extent of 1.92.5 and the aforesaid survey number was sub-divided as 1849, 1852 and 1853 and in the Revenue Records, there is no 'Odai Poramboke' or 'Water Channel' and these facts have come to light during the course of inspection.

6. In view of the categorical stand taken by the Respondents 1 to 3 that in Resurvey No.1313/2, there is no encroachment either as 'Odai Poramboke' or as 'Water Channel',

this Court is of the considered view that it cannot be stated that the 4th Respondent had encroached the Water Channel in Survey No.1313/2 situated at Palaniappa Street, 2nd Cross, Thavuttupalayam, Anthiyur Taluk, Erode District, as such, this Court holds that the Petitioner is not entitled to the relief sought for by him in the present Writ Petition.

Resultantly, the Writ Petition fails. In fine, the Writ Petition is dismissed leaving the parties to bear their own costs.

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

ssd

To

1. The District Collector,
Erode District, Erode
2. The Deputy Director of Town and
and Country Planning,
Salem Region,
No.6, Sannathi Street,
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Salem - 636 005
3. The Executive Officer,
Anthiyur Town Panchayat,
Anthiyur,
Erode District

+1 cc to Mr.R.Arundattan, Advocate Sr.24035

+1 cc to the Goverment Pleader SR.24288

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(CS-VII)

EU(11/04/2018)

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