

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.07.2018

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

WP.No.9524/2018 & WMP.No.11428/2018

S.Ramanathan

.. Petitioner

Versus

- 1 The District Collector
Collectorate, Salem District.
- 2 The Tahsildar
Valapaddi Taluk Office
Salem District.
- 3 The Executive Engineer
Rural Roads & Highways Department
Nattamai Building, Salem District.
- 4 The Assistant Engineer
Rural Roads & Highways Department
Nattamai Building, Salem District.
- 5 The Assistant Engineer
Public Works Department
Irrigation Division, Valapaddi Taluk
Salem District.

.. Respondents

Prayer:-

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus forbearing the respondents 3 to 5 from obliterate and constructing the concrete wall in the stream which is situated in S.No.23, Mannaickenpatti, Valapaddi Post and Taluk, Salem District and direct 1 and 2 respondents to remove the encroachment made in S.No.23, Mannaickenpatti, Valapaddi Post and Taluk, Salem District which is situated in Attur Taluk, Salem District, within a time frame as may be fixed by this Court.

For Petitioner : Mr.A.Rajakumar

For Respondents : Mr.A.N.Thambidurai, Spl.GP

ORDER

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

By consent, the writ petition is taken up for final disposal. Mr.A.N.Thambidurai, learned Special Government Pleader appears on behalf of the respondents.

2 The petitioner claims to be the owner of the agricultural lands comprised in S.Nos.31/6, 34/3C, 36/2 and 36/3 at Mannaickenpatty, Valapadi Post and Taluk, Salem District, through a registered Partition Deed bearing Doc.No.3030/2010 dated 13.07.2010 and claims to be in possession and enjoyment of the same. The petitioner would further aver that there is a stream/canal which flows through S.No.23 and during rainy season, water is used to flow through the said stream/canal and it is being utilised by the petitioner and other agriculturists. The apprehension expressed by the petitioner is that the respondents 3 to 5 are making attempts to obliterate the water stream, by putting up a compound wall and in that event, flow of water will be affected and as a consequence, the agricultural operations being carried out by the petitioner and others would definitely be affected and in this regard, the petitioner has submitted a representation dated 13.01.2018 to the respondents and in spite of receipt and acknowledgment, no response is forthcoming and taking advantage of the same, the construction is proceeding in a fast manner and hence, the petitioner is constrained to approach this Court, by filing the present writ petition.

3 The writ petition was entertained on 14.06.2018 and the 3rd respondent has filed the counter affidavit.

4 The learned counsel for the petitioner has drawn the attention of this Court to the materials placed before it, especially the photographs and would submit that under the guise of clearing the canal/strengthening the side walls, attempts are being made to put up a wall which prevents free flow of water and expressing the said apprehension only, the petitioner came forward to file the present writ petition.

5 Per contra, Mr.A.N.Thambidurai, learned Special Government Pleader has drawn the attention of this Court to the counter affidavit of the 3rd respondent and would submit that as per G.O.Ms.Nos.16 and 88 of the Rural Development and Panchayat Raj [SGS-II] Department and the Highways and Minor Ports [HF-1] Department dated 26.08.2014 and 27.10.2017 respectively, upgradation of Mannaickenpatty Road to Pallathathanur Road K, 0/0 - 6/2 has been taken up for upgrading the Union Road to ODR standards and it involves upgrading the existing road including construction of Retaining Wall at Km0/6-0/8 along the stream

bund to a length of 125 Km and since the stream run adjacent to the road edge and also in the curved path in the above location and that there is no space for vehicles and a fair decision has been taken to construct the Retaining Wall and would further submit that the said construction would not halt or slow the free flow of the water in the stream or canal. It is the further submission of the learned Special Government Pleader that the petitioner in order to protect his land during rainy season / flood situation, wants the Government to put up a Retaining Wall and the same cannot be done and it is for the petitioner to protect the possession of his own land and prays for dismissal of this writ petition.

6 This Court has considered the rival submissions and also perused the materials placed before it.

7 A perusal of the photographs made available in the typed set of documents would disclose that the road is a single lane road and on the side of the road, steps are being taken to de-silt and clear the canal/stream and construction is also going on. This Court is able to see that between the road and the alleged canal, there is not even a bund or a small wall and since it is also a curved, there is a likelihood of accident and therefore, a fair decision has been taken to put up a Retaining Wall so as to avoid the accidents.

8 The learned Special Government Pleader, on instructions, also made a submission that on account of the construction of the said wall, the flow of water through the stream would not be impeded/affected and the said submission is also placed on record.

9 A perusal of the counter affidavit would also disclose among other things that as per the Government Orders, upgradation of Mannaickenpatty Road to Pallathathanur Road is being taken and since it is for the public purpose, this Court is not in a position to stay the same. This Court, taking into consideration the stand of the 3rd respondent in the counter affidavit coupled with the submission made by the learned Special Government Pleader appearing for the respondents that in the event of construction of the Retaining Wall, the flow of water through the canal/stream which lie by the side of the road, would not be affected, is of the view that the respondents may be permitted to put up the said wall without affecting the flow of water through the said stream/water and it should also be done in a scientific manner.

10 The writ petition stands disposed of with the above observations. No costs. Consequently, connected miscellaneous petitions is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

AP

To

- 1 The District Collector
Collectorate, Salem District.
- 2 The Tahsildar
Valapaddi Taluk Office
Salem District.
- 3 The Executive Engineer
Rural Roads & Highways Department
Nattamai Building, Salem District.
- 4 The Assistant Engineer
Rural Roads & Highways Department
Nattamai Building, Salem District.
- 5 The Assistant Engineer
Public Works Department
Irrigation Division, Valapaddi Taluk
Salem District.

+1cc to the Government Pleader, S.R.No.43604

WP.No.9524/2018

EV(Co)
CS/13/07/18

WEB COPY