

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2018

CORAM:

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

W.P.NO.12503 OF 2017
AND WMP NO.13295 OF 2017

V.S.Ponnusamy

... Petitioner

Versus

1.The Collector
Collectorate
Erode,
Erode District.

2.The District Revenue Officer
Collectorate
Erode,
Erode District.

3.The Revenue Divisional Officer
Collectorate
Erode,
Erode District.

4.The Tahsildar
Taluk Office
Erode - 1.

5.V.P.Eswaramurthy

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records in the impugned order dated 02.03.2017 in Na.Ka.No.3203/2017/Oo.1 passed by the second respondent so far as the petitioner's land is concerned in R.S.No.124/8 at Nalla Goundenpalayam Village in Erode Taluk and District and quash the same.

For Petitioner : Mr.M.V.Venkataseshan

For Respondents: Mr.A.N.Thambidurai
1 to 4 Special Government Pleader

For Respondent 5: Mr.S.Kaithamalai Kumaran

O R D E R

(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 for the respondents 1 to 4. Mr.S.Kaithamalai Kumaran, learned counsel, appears for the fifth respondent.

2. The petitioner would state that his father and the father of the fifth respondent are brothers and they jointly purchased the property admeasuring to an extent of 6 cents of land in R.S.No.124/8 at Nalla Goundenpalayam Village and by a registered partition deed dated 15.07.1992, the partition took place, under which, the said land was allotted equally to his father as well as to the father of the fifth respondent. The petitioner would further state that under a settlement deed dated 11.05.2010 among other properties, his father has settled the subject land also in his favour and with a view to conveniently enjoying the other properties, he put up a small 1.5 feet pipeline in R.S.No.124/8 for draining the excess water from the land, so that it could reach the main irrigation channel and as it is a water source in patta land, it is termed as "Nilaviyal Odai" and it is not a public channel.

3. The petitioner would further aver that the fifth respondent has executed a registered power of attorney in his favour in respect of all land obtained by him under the partition deed dated 15.07.1992 and subsequently executed the sale deed in favour of his father-in-law, who in turn, executed another power of attorney in respect of certain lands, to his son-in-law, the fifth respondent herein, on 31.05.2002 and based on the same, the fifth respondent had sold the property vide registered sale deed dated 17.02.2010 and he was in possession and also in respect of the remaining lands, the father-in-law of the fifth respondent has executed a Will dated 31.05.2002 in favour of his daughter Tmt.E.Mallika who is the wife of the fifth respondent, and he died on 21.12.2014.

4. It is further stated by the petitioner that on an earlier occasion, the wife of the fifth respondent, namely Tmt.E.Mallika, filed a writ petition in W.P.No.20261 of 2016 praying for issuance of writ of mandamus directing the fourth

respondent herein and the Land Revenue Inspector, Erode North, Erode Taluk, to implement the order made in L.Dis.No.5298/2016/A3 dated 25.04.2016 and the said writ petition was disposed of on 16.06.2016 by directing the respondents therein to do the needful in respect of the said proceedings dated 25.04.2016 and take further action against the third respondent therein by issuing notice well in advance and after affording an opportunity of hearing to the parties concerned and it was directed to be done within a stipulated time.

5. Accordingly, the fourth respondent has conducted enquiry and vide proceedings dated 16.08.2016, taking note of the pendency of the Civil Suit in O.S.No.180 of 2016 as well as the interlocutory application in I.A.No.464 of 2016 filed by her on the file of the District Munsif Court, Erode, observed that after conclusion of the proceedings in the said suit and by enclosing the result of the said proceedings, the request made by Tmt.E.Mallika will be considered.

6. The wife of the fifth respondent also filed a contempt petition in Cont.P.No.2480 of 2016 alleging willful non-compliance of the order dated 16.06.2016 passed in W.P.No.20261 of 2016 and the contempt petition was closed on 11.01.2017.

7. Subsequently, the fifth respondent, who is the husband of Tmt.E.Mallika, submitted a petition to the second respondent stating that regarding removal of encroachment on Nilaviyal Odai situate in R.S.No.124/8 and 125/5 at Nalla Goundenpalayam Village, Erode, despite the petition given to the fourth respondent, no action has been taken and therefore, requested to take appropriate action as per G.O.Ms.No.540, Revenue Department, dated 14.12.2014.

8. In the interregnum, the suit filed by the wife of the fifth respondent in O.S.No.180 of 2016 on the file of the District Munsif Court, Erode, for the relief of permanent injunction and for removal of encroachment, came to be dismissed for default on 17.02.2017 and no steps have been taken to restore the original suit.

9. The District Revenue Officer, after taking into consideration the petition submitted by the fifth respondent and after putting the petitioner herein as well as the fifth respondent on notice and after eliciting the response of the Village Administrative Officer and further taking note of Board of Revenue Standing Order 26/15, has held that in respect of Nilaviyal Odai in S.No.124/8 and 125/5 of Nalla Goundenpalayam Village, steps have been taken to measure the same and after finding the encroachment, if any, it should be removed by invoking the Tamil Nadu Land Encroachments Act, 1905, with the

aid of the Police. Challenging the legality of the said order dated 02.03.2017, the present writ petition is filed.

10. Mr.M.V.Venkataseshan, learned counsel appearing for the petitioner would submit that admittedly, the wife of the fifth respondent herein, has filed the above said suit, for the very same relief and failed to obtain any interim order and it was also dismissed for default on 17.02.2017. By utilizing the services of her husband, namely, the fifth respondent, submitted a representation to the second respondent without disclosing the relevant facts and details and the second respondent also, without taking into account the relevant facts and circumstances, has erroneously concluded as if there are encroachments in the said survey numbers and further, the provisions of the Board of Revenue Standing Order 26/15, has no application to the case on hand for the reason that there is no obstruction in the Nilaviyal Odai on the part of the petitioner and while putting up the superstructure also, he made a provision for free flow of water by putting up a pipe and the Government/ Local Body while laying the road across the Nilaviyal Odai, also put up a pipe and as such, it cannot be said that the petitioner has obstructed the free flow of water. It is the further submission of the learned counsel for the petitioner that the fifth respondent also failed to approach the Court, with clean hands, despite knowledge of the fact that the suit filed by her wife for the very same relief, came to be dismissed for default and suppressing the said fact, approached the second respondent, who in turn, without due and proper application of mind, to the relevant materials, has erroneously concluded, as if there are encroachments and passed the impugned order and prays for interference.

11. Per contra, Mr.A.N.Thambidurai, learned Special Government Pleader would submit that the writ petition is premature for the reason that only after surveying and conducting inspection, action will be taken under the provisions of the Tamil Nadu Land Encroachments Act, after putting the encroachers on notice, in the event of encroachments being found and prays for dismissal.

12. Mr.S.Kaithamalai Kumaran, learned counsel appearing for the fifth respondent, apart from adopting the arguments of the learned Special Government Pleader, would contend that the petitioner under the guise of putting up a superstructure, tries to alter the source of Nilaviyal Odai and in that event, he would be likely to be affected as there is likelihood of lack of water supply to the agricultural lands owned by him and further that in the event of encroachments being made, all the agriculturists in that area would be affected and as such the apprehension is wholly unfounded and prays for dismissal.

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

14. It is relevant to extract Board of Revenue Standing Order 26/ 15.

"Encroachments on plan - marked details: - A plan - marked channel or pathway running in a patta land is a Government land. Eviction of encroachments in such lands need be invoked only in cases where the encroacher has interfered with the plan marked detail so as to close its entrance to and exit from his lands. In the case of pathways and cart tracks which have been used by the public till recently, the ryot should not be allowed to shift the course of the details to suit his own convenience. However, such diversions of plan marked channel from its original course, with a view to consolidate his holding or to facilitate irrigation of the portions which would be otherwise severed need not be treated as encroachment."

15. In the considered opinion of this Court, Board of Revenue Standing Order 26/ 15 has no application to the case on hand for the reason that it is not even the case of the official respondents that the petitioner had obstructed the free flow of water. The fact remains that while putting up a superstructure, he has also put up a pipeline for free flow of water and attention of this Court was also invited to the photographs taken, which clearly shows, that the Government / Local Body, while laying the road across the Nilaviyal Odai, also put up a pipeline. Even otherwise, as per the later portion of Board of Revenue Standing Order 26/15, such diversions of plan marked channel from its original course, with a view to consolidate his holding or to facilitate irrigation of the portions which would be otherwise severed need not be treated as encroachment. In the considered opinion of this Court, the petitioner did not obstruct the free flow of water through Nilaviyal Odai.

16. The second respondent, after considering the statements given by the petitioner as well as the fifth respondent and also the jurisdictional Village Administrative Officer, has directed survey of the lands in S.No.124/8 and S.No.125/5 admeasuring an extent of 0.02.5 hectares and 0.13.5 hectares, along with Nilaviyal Odai, to find out the places in which encroachments have been made and directed the concerned officials to take appropriate action in terms of the provisions of the Tamil Nadu Land Encroachments Act, with the aid of police.

17. As rightly contended by the learned Special Government Pleader as well as the learned counsel appearing for

the fifth respondent, the second respondent did not conclude that the petitioner is an encroacher and he has merely directed the concerned officials to carry out inspection to find out encroachments, if any, with a further direction to remove the same, in accordance with law, with the help of police.

18. In the result, the writ petition is disposed of and the fourth respondent is directed to carry out the directions given by the second respondent in his order dated 02.03.2017 by carrying out the inspection on the above said lands and in the event of encroachments being found, put the encroachers on notice, in terms of the provisions of the Tamil Nadu Land Encroachments Act, 1905, and take appropriate action to remove the encroachments, by following due process of law. The said exercise is to be carried out within a period of twelve weeks from the date of receipt of a copy of this order.

19. The writ petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

TK

To

1.The Collector
Collectorate
Erode, Erode District.

2.The District Revenue Officer
Collectorate
Erode, Erode District.

3.The Revenue Divisional Officer
Collectorate
Erode, Erode District.

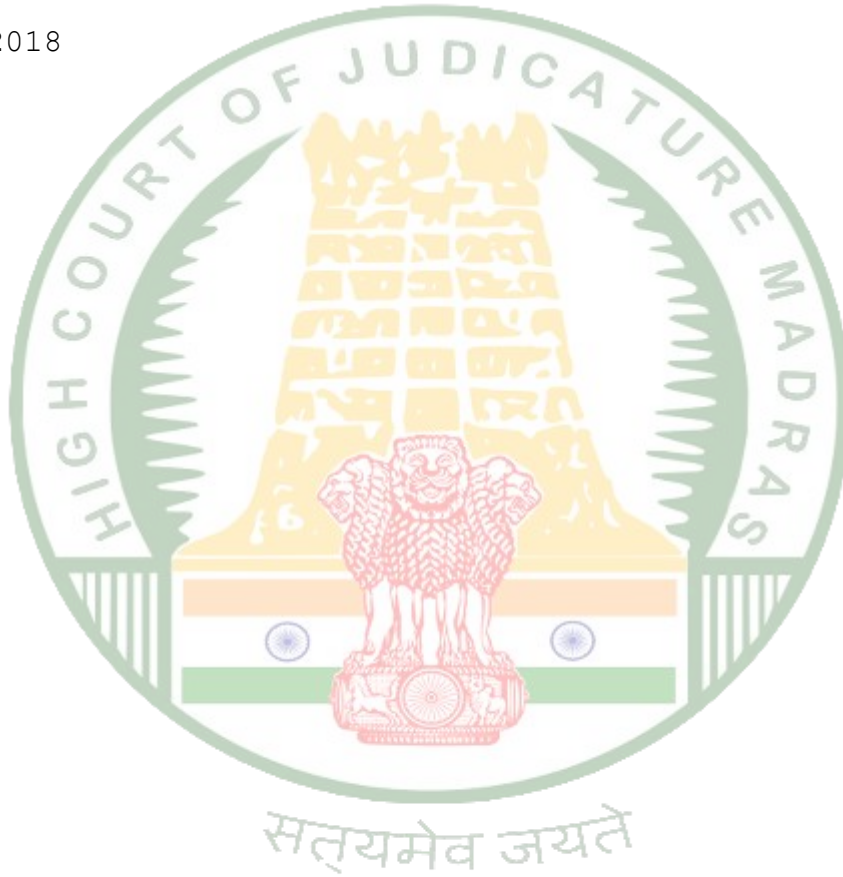
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4.The Tahsildar
Taluk Office, Erode - 1.

+1cc to Mr.S.Kaithamalai Kumaran, Advocate sr.no.37792
+1cc to Mr.M.V.Venkataseshan, Advocate 37665
+1cc to Government Pleader in sr.no.37888

W.P.NO.12503 OF 2017

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