

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.564 of 2007

And

M.P.No.1 of 2007

Balusami

... Petitioner

Vs.

1. Sub-Divisional Magistrate and  
Sub-Collector,  
Pollachi.

2. The Tahsildar,  
Taluk Office Campus,  
Pollachi.

3.Natarajan

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus forbearing the respondents from taking any steps to remove the trees found in S.F.No.71/3A, Pethanaickanur Village, Pollachi, without following the due process of law.

For Petitioners: M/s.Sarvabhauman Associates

For Respondents: Mr.R.Govindasamy for R1 and R2

Special Government Pleader

Mr.M.N.Balakrishnan for R3

O R D E R

The petitioners have filed this writ petition seeking issuance of Writ of Mandamus forbearing the respondents from taking any steps to remove the trees found in S.F.No.71/3A, Pethanaickanur Village, Pollachi, without following the due process of law.

2.The case of the petitioner is that the petitioner's wife one Radhamani is the absolute owner of the agricultural properties situated in various survey numbers covered under the sale deeds dated 05.03.2001, 29.08.2001 and 30.11.2000. She purchased the same from Muthulakshmi, Muthusamy and Krishnasamy.

3.It is the further case of the petitioner that there is a strip of poramboke land in between the petitioner's wife's property and a river passing through the village and there are some coconut trees in the said poramboke land and the petitioner's wife is also paying B Memo charges for the same. Whiles, the third respondent who is the adjacent land owner on the Northern side of the petitioner's wife's land started obstructing her peaceful possession and enjoyment of the properties. Hence, she filed a suit in O.S.No.351 of 2006 on the file of the District Munsif, Pollachi, against the respondents 2 and 3 and the State of Tamil Nadu along with interim application in I.A.No.1500 of 2006 seeking interim injunction.

4.It is the further case of the petitioner that pending disposal of the suit, the third respondent who was politically well connected prevailed over the first respondent to initiate proceedings under Section 133 of Cr.P.C. against the petitioner. The first respondent also served the petitioner with an order for the removal of nuisance dated 01.12.2006 in M.C.No.65/06 A1 alleging that the petitioner created unlawful obstruction to the river poramboke which is causing difficulty to the people adjacent to S.F.No.71/3A. The first respondent has also threatened to remove the trees from the said poramboke land. Hence, the petitioner has come forward with this writ petition.

5.The first respondent has filed a counter stating that the disputed property is a river poramboke and the petitioner has caused unlawful obstruction to the river poramboke. Since the petitioner's possession is objectionable one, the first respondent in the capacity of Sub-Divisional Magistrate, Pollachi, on perusing the information from the third respondent, initiated proceedings under Section 133 of Cr.P.C. against the petitioner. As there were frequent complaints from the people adjacent to S.F.No.71/3A of Pethanaickanur Village, Pollchi Taluk that the petitioner is causing difficulties by way of obstructing the mamool cart tract, the first respondent has issued an order for the removal of nuisance dated 01.12.2006 in M.C.No.65/06 A1.

6.I have considered the rival submissions made by the learned counsel appearing for the petitioner, learned Special Government Pleader appearing for the respondents 1 and 2 and the learned counsel appearing for the third respondent.

7.There is a civil suit pending in O.S.No.351 of 2006 on the file of the District Munsif, Pollachi. In the absence of any prohibitory order from the civil forum, power is vested with the first respondent to pass orders under the relevant provision. If the petitioner is aggrieved by any of the order passed by the

first respondent, it is open for the petitioner to file appropriate appeal before the appropriate forum. Without challenging the order of the first respondent, filing of the writ petition by the petitioner is un-sustainable.

8. Without following the due process of law, the petitioner's possession cannot be disturbed. However, on perusal of the counter affidavit, it is seen that after following the due process of law, the first

respondent has issued an order for the removal of nuisance dated 01.12.2006 in M.C.No.65/06 A1. Hence, it is open to the petitioner to work out the remedy in the manner known to law.

9. The writ petition is accordingly dismissed. No costs. Consequently, the connected miscellaneous petition is also closed.

-s/d-  
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

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To

1. The Sub-Divisional Magistrate and  
Sub-Collector,  
Pollachi.

2. The Tahsildar,  
Taluk Office Campus,  
Pollachi.

+1 CC to M/s. Sarvabhauman Associates, sr 38886.  
+1 CC to Mr. M.N. Balakrishnan, Advocate sr 39627.

W.P.No.564 of 2007  
And  
M.P.No.1 of 2007

VGII (CO)  
SP(28/06/2018)

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