

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

W.P.No.19067 of 2017
and
W.M.P.No.20586 of 2017

K.Anandan

.. Petitioner

Vs.

1. The Principal Chief Engineer,
Water Resource Organization-cum-
Chief Engineer (General),
Chepauk, Chennai-600 005.
2. The Executive Engineer,
Public Works Department,
Water Resource Organization,
Sarapanga Sub-Division,
Namakkal.
3. The Divisional Engineer,
National Highways,
Omalur Main Road,
Kuranguchavadi, Salem-4.
4. The District Collector, Salem District.
5. The Tahsildar, Aathur Taluk, Salem District.
6. K.Ramesh
(Sixth Respondent impleaded as per
order dated 10.08.2018 in
W.M.P.No.2928 of 2018 in W.P.No.19067 of 2017)

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to forbearing the respondents herein, their men, agents or officials or any one claiming on their behalf from in any manner laying road affecting water course in S.No.21/3 and passage under old Kalpalam in S.No.20 of Aarathi Agraharam, Kamakkapalayam PO, Aathur Taluk, Salem District-636 112.

For petitioner : Mr.M.Sudhan
for M/s.H.Tayumanasamy

For respondents: Mr.S.N.Parthasarathy,
Govt. Advocate for RR-1 to 5

Mr.P.B.Balaji for R-6

ORDER

(The Order of the Court was made by M.Venugopal, J)

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Mandamus to forbear the respondents herein, their men, agents or officials or any one claiming on their behalf from in any manner laying Road affecting Water Course in S.No.21/3 and Passage under old Kalpalam in S.No.20 of Aarathi Agraharam, Kamakkapalayam PO, Aathur Taluk, Salem District - 636 112.

2. Heard both sides and perused the materials available on record.

3. The petitioner has filed the present Writ Petition under the caption "Public Interest Litigation" (PIL) to prevent the closure of natural Water Course over 1000 meters from Aarathi Agraharam Division Road in existence in S.No.21/3 of Aarathi Agraharam, Athur Taluk, Salem District and damage being caused to the Bridge (Old Kalpalam) in S.No.20 under which the rain water flows during rainy season leading Aarathi Agraharam Lake.

4. The Petitioner claims that he is an Agriculturist and earns income through Agriculture. The Petitioner's village, namely Aarathi Agraharam Village, comprise of vast extent of Agricultural lands and the main avocation of the villagers is Agriculture and for their livelihood, most of them depend on Agriculture. The Aarathi Agraharam Lake in the Petitioner's Village is the source of water for Irrigation of hundreds of Hectares of lands. The rain water flows into the Lake during rainy season and their natural Water Course is in existence for several generations and the same are entered in the Revenue Records and being maintained till date.

5. The crystalline stand of the Petitioner is that S.No.21/3 is entered as 'Vari' in the Revenue Records. Moreover, S.No.21/3 commences from Aarathi Agraharam Division for about 1000 meters and there is a Bridge (Old Kalpalam) in S.No.20 under which the rain water flows during rainy season leading Aarathi Agraharam Lake. There is a National Highway which runs through the

Petitioner's village and on both sides of the Highway, there are hundreds of Hectares of Agricultural lands by using the rain water from the Water Course as well as Lake Water. As a matter of fact, the National Highways Authorities have laid the Roads. It is represented on behalf of the Petitioner that the Water Course in S.No.21/3 on the side of the National Highways, is being damaged and in some places, it is closed. Further, on both sides of the Bridge (Kalapalm) under which rain water is flowing through Water Course in S.No.21/3 is being closed with hard big rocks so as to prevent 'ingress and egress of water'.

6. The principal grievance of the Petitioner is that the Respondents 1 to 3 are endeavouring to put up a Mud Slop on both sides of the Bridge closing the inlet and outlet for passage of water so as to form a Road for the benefit of some land owners to convert the water source area as vacant site and also to convert the character of Lake itself as vacant land without source of water.

7. At this juncture, the Learned Counsel for the Petitioner projects an argument that if the water channel in S.No.21/3 through Old Kalpalam is damaged and closed by laying Roads for the benefit of local Politicians and some Real Estate owners, there is no Water Course for the rain water to flow into the Lake and in which event, the Lake and avocation of Agriculture in the Village will be vanished soon depriving the avocation and livelihood of the entire village people.

8. According to the Petitioner, all the villagers are opposed to the conduct of the Respondent Nos.1 to 3 who had commenced their unlawful activities of damaging the water channel and passage of water under the Bridge by using JCP machine and heavy vehicles to complete the illegal activities without any delay. Indeed, the Respondents' conduct proves that fencing itself is invading the crop. The villagers had sent representations to all the Respondent Nos.1 to 3 to forthwith stop the illegal activities of causing damage to the water channel in S.No.21/3 and to restore the water passage under the 'Kalpalam' in S.No.20. The petitioner has also sent representation dated 15.04.2017 to the Respondent Nos.1 to 3 as well as to the Respondent Nos.4 and 5 mentioning that the aforesaid illegal activities are opposed to law and against the interest of public.

9. The Respondents, after receipt of the Petitioner's Representation, dated 15.04.2017, had now commenced to lay the Roads to erase the trace of Water Course in S.No.21/3 and 'Old Kalpalam' in S.No.20 used as passage for rain water into the Lake.

10. In fact, the public money is used for illegal activities for laying the Road for the benefit of some affluent persons who have vast extent of land adjacent to Water Course. If the Respondents are allowed to proceed with laying of Road(s) on the Water Course in S.No.21/3 and closing 'Kalpalam' in S.No.20 used for passage of water, the Respondent Nos.4 and 5 will delete the entry of Water Course and passage in those Survey Numbers from the Revenue Records, which will totally deprive the water source and water body to the villagers. Hence, for these reasons, the Petitioner has filed the present Writ Petition to forbear the respondents herein, their men, agents or officials or any one claiming on their behalf from in any manner laying Road affecting Water Course in S.No.21/3 and passage under old Kalpalam in S.No.20 of Aarathi Agraharam, Kamakkapalayam PO, Aathur Taluk, Salem District-636 112.

11. The Learned Government Advocate appearing for the Respondent Nos.1 to 5, by filing counter affidavit, submits that the land in S.No.21/3 measuring 0.08.5 Hectares in Kammakkapalayam Village, Athur Taluk, Salem District, is classified as "Vari" Poramboke through which the rain water flowing from the adjacent Patta lands are taking course to reach the Aarathi Agraharam Lake and the rain water flowing through the said Vari (small water course canal) passes through the Bridge in S.No.20 classified as Highway Poramboke without any obstruction or damage to the existing Bridge in whatsoever manner. Further, after coming to know about the possible obstruction of the 'Vari, the Revenue Inspector inspected the site and conducted field inspection and also submitted a report, in which it was mentioned that there is no obstruction of any kind preventing the flow of water through S.No.21/3 classified as "Vari" Poramboke and the rain water is flowing to the Aarathi Agraharam Lake through the land without any damage caused to the Bridge situated in the Highway in S.No.20 of the village.

12. The Learned Government Advocate comes out with a categorical plea that there is no proposal for laying any Road on the existing Water Course channel, viz., 'Vari' in S.No.21/3 of the village, which will cause hindrance and obstruction for the flowing of rain water through the said 'Vari' to the Aarathi Agraharam Lake. In reality, free flow of 'Vari' water is being ensured through the said 'Vari' without any obstruction.

13. Apart from the above, it is projected on the side of the Respondent Nos.1 to 5 that the rain water flowing through the said Vari in S.No.21/3 is also taking its course through the Bridge in S.No.20 classified as Highway Road without any damage as alleged by the Petitioner.

14. The Learned Government Advocate appearing for the Respondent Nos.1 to 5 brings it to the notice of this Court that necessary protective measures are being taken then and there, to ensure the free flow of water through the said Vari Poramboke without any damage to the existing Bridge in S.No.20, Highways Road. Besides this, the Bridge connecting 'Vari' and Highways Road which was in dilapidated condition earlier, now stands restored. Also it is ascertained from the Authorities that no such activities have taken place as averred by the Petitioner to cause damage to the Water Course channel. As a matter of fact, free flow of rain water is ensured and that the 'Vari' is being protected without detriment for flow of water.

15. The Learned Government Advocate appearing for the Respondent Nos.1 to 5 further contends that there is no public unrest as per the report of the Firka Revenue Inspector, Kattukottai and even the statement obtained by him from the public unerringly points out that there is no obstruction of any kind to prevent the free flow of rain water through the said Vari Poramboke in question and that the public interest in that regard is fully safeguarded and ensured. In fact, it is the version of the Respondent Nos.1 to 5 that the activities leading to the detriment of free flow of rain water through the Water Course channels will be dealt with in conformity with the provisions of the Tamil Nadu Land Encroachment Act and as per the dictum laid down by the Courts.

16. In response, it is the contention of the Learned Counsel appearing for the Sixth Respondent by filing counter affidavit that, in the end of 2016, the 'Vari Poramboke' land in S.No.21/3 had been illegally Encroached by the near-by land owner, namely Velammal (i.e. the Writ Petitioner's Aunt) and her legal heirs Paramasivam and Paneerselvam, who have land in Aarathi Agraharam Village in S.No.21/2B and 22/1B, which is exactly between the said 'Vari' land as mentioned in the Revenue Records in S.No.21/3, which measures 121 meters. The land was otherwise used for rain water flooding during rainy season and in other times, it is used as dirt path for transporting Agricultural goods from the near-by Farmers and villagers' land.

17. It is the submission of the Sixth Respondent that after various representations by the villagers, the Sixth Respondent and the other land owners, the said land had been reclaimed from the Encroachers by the Tahsildar, Athur/Fifth Respondent, on 31.01.2017. The Writ Petitioner is the direct blood sister's son of the said Velammal, who is the Encroacher of the said Vari land in S.No.21/3, which measures 121 meters. Since the Encroachment had been removed by the Revenue Authorities and Vari Land is restored as both pathway and flood water drain, the Petitioner has used the Constitutional provision in the present

Writ Petition suppressing these facts and trying to help the Encroacher who is the aunt of the Petitioner.

18. The Learned Counsel for the Sixth Respondent points out that the Petitioner's aunt, i.e. Encroacher Velammal's legal heirs, namely Paramasivam and Panneerselvam are Government School Teachers and one Mr.Arivalagan, son of Panneerselvam is also involved in the Encroachment activities, who is working on contract basis as Assistant in the Revenue Office of Athur Taluk in powerful position and further that the villagers as well as the Sixth Respondent sent petitions to remove the Encroachments made in S.No.21/3 on 17.12.2016 and under G.O.No.540 of 2014, the then Revenue Officials took action and removed the Encroachments on 31.01.2017 itself.

19. The Learned Counsel for the Sixth Respondent comes out with a stand that on 01.05.2017, the Aarathi Agraharam Village Grama Sabha meeting was conducted, in which Resolution No.24 was passed to construct a proper rain water drain and dirt path without hindering the rain water way, though the rain water way is not leading to any Pond, Lake or any other water bodies as stated by the Petitioner, as the Farmers like the Sixth Respondent did not want to block the rain drain path known as Vaari. The said Resolution by the villagers on Grama Sabha was sent to the District Collector, Salem and then it was forwarded to the Block Development Officer, Tahsildar, PWD Engineer and Highways Department Engineers and after the District Collector's approval on 15.06.2017, by letter dated 15.06.2017 in No.2013/2017/A6, an order was passed by the Commissioner of Union, Thalaivasal in Letter No.1051/2017/A2, dated 04.07.2017, and a sum of Rs.65,000/- was allotted to construct a rain drain with No Objection Certificate and clearance was done by the Revenue Authorities for the same and a tender was called for the same, which had been granted to K.R.G.Construciton Company on 04.07.2017.

20. The submission of the Sixth Respondent is that the Project in question was completed without an hindrance to the rain water and that neither the Government nor the Grama Sabha had intention to lay a Thar Road or to block the rain water drain. Added further, the pipes laid are not obstructing the 'Water Course' in any way and during August 2017 and 2018, heavy rains drained perfectly due to the work done by the other Respondents and now the villagers are utilising the Channel for drainage without a glitch. After clearing unwanted shrubs and debris, the 'Channel' is widened and it is very useful for the drain of the Rain water. The new pipes were laid which helps an excess water to drain rapidly.

21. As a matter of fact, the Village Grama Sabha Committee had also submitted the Resolution to the Honourable Chief Justice of this Court and a copy to the Registrar General of this Court, which was later forwarded to the District Legal Services Authority, Salem, which also directed to take the needful action to the District Collector, Salem on 03.07.2017 and various efforts were taken by the Sixth Respondent and the other village people and the said Vari Land and the pathway were used by the village people centuries together and these facts are suppressed by the Writ Petitioner.

22. The Learned Counsel for the Sixth Respondent submits that on 18.12.2017, a complaint had been filed before the Thalaivasal Police Station against the Encroachers, namely Paramasivam (s/o Pachaimuthu), Panneerselvam (s/o Pachaimuthu), Anandan (writ petitioner) (s/o Kaliyamoorthi), Arivalagan (s/o Panneerselvam) and Vinoth Kumar (s/o Panneerslevam) on obstructing and damaging the rain water drain on the said S.No.21/3 'Vari Land' and obstructing the public passage on the said land. The said complaint bears C.S.R.No.387 of 2017, subsequent to which, a Peace Committee was formed under the Deputy Superintendent of Police (DSP), Athur Taluk, on 27.12.2017, in which the Writ Petitioner had mentioned about the present Writ Petition and only then it came to the knowledge of the villagers. In fact, the DSP, Athur and the other Revenue Officials have strictly warned the Encroachers not to obstruct the public property and villagers from using the said Vari Land. The Learned Counsel appearing for the Sixth Respondent submitted that only with a view to obstruct the work of Government Officials in removing the Encroachment, the Petitioner has filed the present Writ Petition.

23. On a careful consideration of the respective contentions of the parties and in view of the fact that the Respondent Nos.1 to 5 have come out with a clear-cut stand that there is no proposal of laying any Road on the existing Water Course channel as 'Vari' in S.No.21/3 of the village and also that there is no obstruction of any kind preventing the flow of water through S.No.21/3 classified as Vari Poramboke and when the fact remains that the rain water is flowing to the Aarathi Aagraharam Lake through the land without any damage being caused to the Bridge situated in National Highway in S.No.20 of the village and further that this Court, taking note of another primordial fact that the Bridge connecting the Highways Road, which was in a dilapidated condition, remained now stood restored, this Court comes to an irresistible conclusion that the present Writ Petition filed by the Petitioner is devoid of merits. Viewed in the above perspective, the Petitioner is not entitled to the relief prayed for in the present Writ Petition. Resultantly, the Writ Petition fails.

24. In fine, the Writ Petition is dismissed, leaving the parties to bear their own costs. Consequently, W.M.P. is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

CS

To

1. The Principal Chief Engineer,
Water Resource Organization-cum-
Chief Engineer (General),
Chepauk, Chennai-600 005.
2. The Executive Engineer,
Public Works Department,
Water Resource Organization,
Sarapanga Sub-Division,
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3. The Divisional Engineer,
National Highways,
Omalur Main Road,
Kuranguchavadi, Salem-4.
4. The District Collector, Salem District.
5. The Tahsildar, Aathur Taluk, Salem District.

+1 cc to Mr.N.Sivakumar, Advocate Sr.No.88701

+1 cc to Mr.R.Sundara kamesh Marthandan, Advocate Sr.No.89315

W.P.No.19067 of 2017

SJ(CO)
CSL/24.01.2019

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