



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :26.03.2018

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.P (MD) No.2244 of 2018

N.Murugesan

... Petitioner

Vs.

1. The District Collector,
Trichy District.

2. The Tahsildar,
Manapparai Taluk,
Trichy District.

3. A.Pitchaimuthu

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondents 1 and 2 to remove the encroachment made by the third respondent in the tank comprised in S.No.140/2 admeasuring an extent of 12 acres situated at V.Periapatti, Manapparai Taluk, Trichy District and to restore the tank in its original position as before encroachment.

For Petitioner : Mr.K.Suresh Kumar

For R1 & R2 : Mr.C.M.Mari Chelliah Prabu
Additional Government Pleader

For R3 : Mr.N.S.Karthikeyan

O R D E R

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

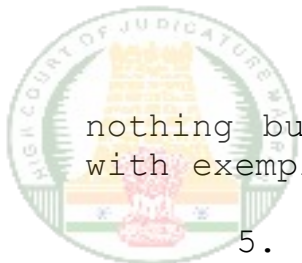


Manapparai Taluk, Trichy District and in the affidavit filed in support of the writ petition would aver that there is a water body / tank having spread over the area of 12 acres called 'Poovangulam' comprised in Survey No.140/2 of the said Village and it is the specific case of the writ petitioner that the said water body has been completely encroached by the third respondent, who happens to be the former President of the Village Panchayat and that apart, he is highly political and financially influenced person and taking advantage of the said position, he has encroached upon the water body. The petitioner would further aver that on account of the said encroachment, the water could not be extracted from the water body and as a consequence, the agriculturists in the said Village are getting affected and it also leads to scarcity of drinking water. The petitioner, in this regard, has submitted a representation dated 23.03.2016, to the High Court Legal Services Committee, Madurai Bench of Madras High Court, Madurai and alleging inaction on the part of the official respondents, came forward to file this writ petition.

2. The learned counsel appearing for the petitioner would submit that on an earlier occasion, the petitioner has submitted a representation dated 09.06.2015, and the Assistant Director of Town Panchayat, Tiruchirapalli vide communication in Na.Ka.A9/1357/2015, dated 29.07.2015, directed the P.A. to the Collector, Tiruchirapalli, to take appropriate action and inform the decision taken to the petitioner and despite such a communication, no response is forthcoming and therefore, the petitioner is constrained to approach this Court by filing the writ petition.

3. Mr.C.M.Marichelliah Prabhu, learned Additional Government Pleader accepts notice on behalf of the respondents 1 and 2 and the learned counsel appearing for the third respondent has invited the attention of this Court to the counter affidavit, would submit that the petitioner and his son were the original owner of the property admeasuring to an extent of 11.21 acres comprised in Survey No.140/2 in V.Periapatti Village, Manapparai Taluk, Trichy District and they jointly executed a registered sale deed bearing Document No.1606/1986, dated 04.06.1986, on the file of the Sub Registrar, Manapparai and ever since he is in possession and enjoyment of the same and the said fact has been totally suppressed in the affidavit filed in support of the writ petition.

4. It is the further submission of the learned counsel for the third respondent that the writ petitioner, for quashing the issuance of Patta issued in favour of the third respondent, filed W.P.(MD).No.6143 of 2017 and it was dismissed on 26.07.2017, by <https://hcc.madurai.judiciary.gov.in/hservices/> to him to work out the appeal remedy in terms of Tamil Nadu Patta Passbook Act, 1983, and would contend that the present writ petition styled as a Public Interest Litigation is



nothing but an abuse of process of law, and prays for dismissal with exemplary cost.

5. In response to the said submission, the learned counsel for the petitioner would submit that the petitioner is now aged about 65 years and having fading memory and as such, would further contend that the alleged sale deed said to have been executed in favour of the third respondent, is also a forgery and prays for appropriate orders.

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

7. It is the specific case of the third respondent in his counter affidavit that the landed property admeasuring to an extent of 11.21 acres comprised in S.No.140/2 at V.Periapatti, Manapparai, Taluk, Trichy District was conveyed by the petitioner and his son in favour of the third respondent and the attention of this Court also invited to the revenue records to see that the said land has not been classified as a water body. The conveyance of the said property of the petitioner and his son in favour of the third respondent is a material fact and admittedly, such fact has not been disclosed in the affidavit filed in support of this writ petition and rather it has been suppressed. It is also to be remembered at this juncture that the writ petition is styled as a Public Interest Litigation and even otherwise, the petitioner is expected to approach the Court with clean hands.

8. The petitioner, on an earlier occasion, filed W.P.(MD). No.6143 of 2017 prays for issuance of writ of Certiorarified Mandamus to call for the entire records pertaining to the impugned Patta No.469 in respect of Survey No.140/2, issued in favour of the fifth respondent therein / third respondent herein and it was dismissed on 26.07.2017 and the petitioner was granted liberty to work out his appeal remedy under the Tamil Nadu Patta Passbook Act and the said remedy is also yet to be availed of.

9. This Court, taking into consideration the above facts and circumstances of the case, is of the considered view that the petitioner has deliberately suppressed the said material fact and the public interest litigant is expected to approach the Court by disclosing all the material and relevant facts and unfortunately, the petitioner has failed to do so and therefore, the writ petition deserves dismissal with cost.

10. In the result, the Writ Petition is dismissed with cost of Rs.10,000/- (Rupees Ten Thousand only) payable to the Child



Care Centre being run by the Madurai Bench of Madras High Court Women Advocates Association on or before 19.04.2018.

11. Call on 23.04.2018 for reporting compliance.

WEB COPY

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
Trichy District.
2. The Tahsildar,
Manapparai Taluk,
Trichy District.

Copy To:-

1. The Officer-in-charge,
Child Care Centre,
Women Advocate Association,
Madurai Bench of Madras High Court,
Madurai.
2. The Section Officer,
Writ Section,
Madurai Bench of Madras High Court,
Madurai.

- + 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 58398
- + 1 CC TO Mr.N.S.KARTHIKEYAN, ADVOCATE IN SR No. 57776
- + 1 CC TO Mr.K.SURESH KUMAR, ADVOCATE IN SR No. 58044

AKV

TE/CVC/SAR-1 : 05/04/2018 : 4P/8C

W.P(MD)No.2244 of 2018
26.03.2018