



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.09.2018

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE T.RAJA
and
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P.(MD) No.2581 of 2018
and
W.M.P.(MD) Nos.2777 and 2778 of 2018

M.George

... Petitioner

Vs.

1. The District Collector,
Kanyakumari District,
Kanyakumari.
2. The Assistant Engineer,
Public Works Department/WRO,
Mylady,
Kanyakumari District.

3. John Britto

... Respondents

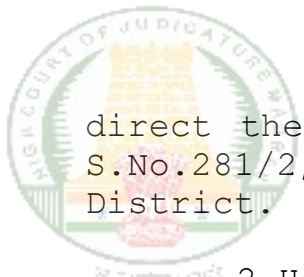
PRAYER: The writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the second respondent in letter No.23/762(a)/2017, dated 27.11.2017 and consequently direct the second respondent not to remove the bride situated in S.No.281/2, Nalloor Village, Agasteeswaram Taluk, Kanyakumari District.

For Petitioner	: Mr.T.Selvakumaran
For Respondents	: Mr.V.R.Shanmuganathan
1 & 2	Special Government Pleader
For Respondent 3	: Mr.G.Prabhu Rajadurai

ORDER

(Order of the Court was made by T.RAJA, J.)

This Writ Petition has been filed challenging the correctness of the impugned order passed by the second respondent in letter No.23/762(a)/2017, dated 27.11.2017 and consequently



direct the second respondent not to remove the bride situated in S.No.281/2, Nalloor Village, Agasteeswaram Taluk, Kanyakumari District.

2.Heard Mr.T.Selvakumaran, learned Counsel appearing for the petitioner, Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the respondents 1 and 2 and Mr.G.Prabhurajadurai, learned Counsel appearing for the third respondent.

3.The learned Counsel appearing for the petitioner submitted that the petitioner is an agriculturist having land in Nalloor Village, Agastheeswaram Taluk, Kanyakumari District and other farmers also having 200 acres of land in entire Agastheeswaram Taluk. When the petitioner and the villagers of Nalloor Village are cultivating paddy, coconut trees, plantain trees, flowers and banana trees, at the time of harvesting, all the farmers used to carry their agriculture produce and other yields from the land in Survey No.281/1 in Nalloor Village, Agastheeswaram Taluk to the main road for transportation of their agricultural produce. As there was no bridge to cross the channel, on 09.09.2011, the farmers in Thovalai channel approached the first respondent to construct a bridge to have access to the land in Survey No.277/2 and other lands belonging to Mariya Selvi, D/o.Soosai Michael; Ramalingam, S/o.Meenakshi; Lakshmi, S/o.Ramalingam and 43 others. Only for the purpose of benefitting several other farmers namely T.Perumal, T.Kasi, Jesuvaram, Manickkavasagam, Mariaselvi, Kasiramalingam, Maria Selvam and Rajappan, etc., who are also having land and doing agricultural occupation and finally using the pathway alone finding it difficult to cross the channel not having the bridge approached the first respondent to construct a bridge over the channel. The first respondent also after ascertaining the genuine request made by the petitioner and others allotted a fund to construct a bridge near Udamparai pond and now it is under the control of the second respondent. The first respondent also formed a mud road upto the second bridge. Once again the petitioner and others approached the first respondent in the year 2011 to construct a bridge at the end of the mud road. On receipt of such representation, the Assistant Engineer, Public Works Department (WRO), Mylady, Kanyakumari District, the second respondent herein, inspected the place and advised the farmers that the Government is not able to construct a bridge as they do not have sufficient fund. In these circumstances, the third respondent sent a complaint to the second respondent stating that the farmers of the Nalloor Village are encroaching 2 feet Government land in the said Survey No.281/2 in Nalloor Village, Agastheeswaram Taluk, Kanyakumari District, with mala fide intention to obstruct the villagers to carry the paddy, plantain trees, flowers and other agricultural produce. In the meanwhile, on 07.11.2011, the Assistant Engineer, Public Works Department (WRO), Mylady, Kanyakumari District,

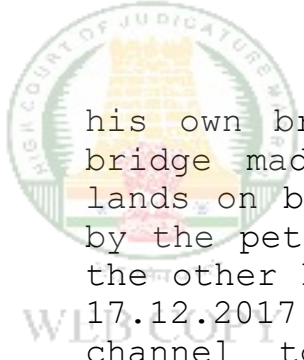


second respondent herein also passed the impugned order dated 27.11.2017 stating that the concrete bridge in Survey No.281/2 situated in Nalloor Village should be removed by the encroachers within twenty one days. The second respondent, without conducting any enquiry and without giving sufficient opportunity to the petitioner, has passed the impugned order which is liable to go as the same is in violation of the principles of natural justice. When the water channel has not been properly covered for the farmers to carry and transport their agricultural produce, the petitioner has come forward and put up a bridge and he is not going to claim the same for his own use. Further, the other farmers who are having land on both sides of the bridge are using the said bridge without any objection from the petitioner. Therefore, if the impugned order is allowed to stand, the bridge constructed over the water channel would be demolished and as a result, the farmers will not be able to carry their produce after harvesting.

4.The counter affidavit filed by the Assistant Engineer, Public Works Department (WRO), Mylady, Kanyakumari District, the second respondent herein, shows that the the objectionable bridge was constructed by the petitioner without obtaining any prior approval from the competent authority. Moreover, the disputed bridge is also having small size of hole which allows the water across the bridge. During rainy season, if there is a flood in the channel which would damage the other lands with agricultural crops. Since the basement of the bridge is having more height than the water way of the channel, during rainy season, the water will stagnate in the channel it may also erode the banks of the channel which will ultimately cause damage to the crops standing on both sides of the bank. Therefore, the construction of the bridge made by the petitioner without taking prior approval from the Government authorities is to be construed as an encroachment and the same is liable to be removed.

5.The third respondent has also filed a counter stating that only on receipt of a complaint from the third respondent which was given to the District Collector, Tirunelveli, dated 21.09.2017, alleging that there has been an encroachment over the water channel, the authorities have initiated necessary actions that has been impugned in this Writ Petition. On receiving the said notice, the petitioner has come to this Court. It is further stated that when there is no complaint made by any farmer and this road and bridge is only for the private purpose of the petitioner and also reduced the width of the channel it has to be removed.

6. A photograph produced by both parties shows that the wall raised to give support to the bridge has been put up almost inside the channel. Since the petitioner has made a submission that it is a common water channel and the bridge was constructed for common purpose meant for all farmers, he is not claiming as



his own bridge. Further, from the date of construction of the bridge made for the convenience of all farmers who are having lands on both sides of the water channel, no objection was raised by the petitioner and no complaint has been given by any one. On the other hand, there has been representations also on 09.12.2011, 17.12.2017 requesting for construction of a bridge over the water channel to allow the farmers to carry and transport other agricultural produce. Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the respondents 1 and 2 submitted that as the petitioner has not prevented others and the bridge is being used commonly by all the farmers for carrying their agricultural produce, no order is required for removal of the bridge put up over the water channel and if there is any obstruction for free flow of water during rainy season, the petitioner and also the second respondent shall remove the obstructions by making any reasonable adjustment. In view of the above, the petitioner is hereby directed to make some adjustment for free flow of water underneath the bridge and the same shall be done under the supervision of the second respondent within a period of four weeks from the date of receipt of a copy of this order.

7.In the result, the impugned order dated 27.11.2017 is quashed and the Writ Petition is allowed. No costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar (CS-I)

To

1. The District Collector,
Kanyakumari District,
Kanyakumari.
2. The Assistant Engineer,
Public Works Department/WRO,
Mylady,
Kanyakumari District.

+ 1 CC TO Mr.G.PRABHU RAJADURAI, ADVOCATE IN SR No. 86123
+ 1 CC TO Mr.T.SELVAKUMARAN, ADVOCATE IN SR No. 86176
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 86217

SRM

TE/RSK/SAR-1 : 30/10/2018 : 4P/6C