



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.01.2018

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CORAM:

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

W.P (MD) No.15075 of 2015

and

M.P (MD) No.1 of 2015

P.Nagenthiran

... Petitioner

Vs.

1.The Commissioner,
Madurai Corporation,
Anna Maligai, Madurai - 20.

2.The Superintending Engineer,
O/o.the Superintending Engineer,
Tamil Nadu Electricity Board,
Race Course Road, Madurai - 2.

3.Thiru M.K.S.Thilla Mohamed

.... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the first respondent to prevent the third respondent from closing the Ramaiah Cross Street starts from Ramaiah Road on the eastern side of the Ramaiah Cross Street and also directing the second respondent not to remove the three electric posts with live wires already installed along with the Ramaiah Cross Street, from the Transformer situated on the Eastern side of the Ramaiah Cross Street.

For Petitioner	: Mr.N.S.Ponnaiah
For R-1	: Mr.R.Prabhu Ramachandran
For R-2	: Mrs.Parameswari for Mr.SMS.Johnu Basha
For R-3	: Mr.R.R.Thamothar Raj

ORDER

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

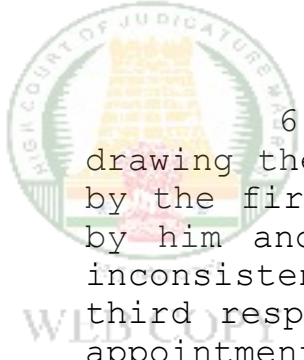
This Writ Petition styled as 'Public Interest Litigation' is filed by the petitioner, who is a so-called Social Activist. However, in the affidavit filed in support of this Writ Petition, the nature of social activities performed or being performed have not been specifically indicated.

2. The petitioner in the affidavit filed in support of this Writ Petition would aver among other things that the residents of Ramaiah Cross Street, Jaihindpuram, Madurai Town, which is popularly known as 'Burma Colony', are stayed there long back from the year 1970 and put up residential Colony. The petitioner would further aver that his father late.Raju, S/o.Ramasamy was also a refugee from Burma and through him, he inherited a 'plot house' in Door No.41 in Ramaiah Cross Street, Jaihindpuram, Madurai Town.

3. It is also the case of the petitioner that third respondent had purchased two plots bearing Survey Nos.71/9 and 76/9 at Maadakulam Village, Madurai South Taluk and closed the end of Ramaiah Cross Street and thereby denying the ingress and egress to the people of the said locality. The petitioner would further state that the second respondent had erected an Electric Transformer on the eastern end of Ramaiah Cross Street on the Ramaiah Main Road and also put up three Electric Poles along with the Ramaiah Cross Street, so that, power supply can be given to the residents of the said Colony.

4. The learned counsel appearing for the petitioner would submit that on account of the high-handed attitude and the act exhibited by the third respondent, the residents of Burma Colony are being denied the access to their respective houses and the said illegal act on the part of the third respondent has also been brought to the knowledge of the concerned Authorities through personal as well as written representation dated 01.06.2015 and since, it had failed to invoke any kind of response, the petitioner came forward to file this Writ Petition.

5. The writ petition was entertained and notices were ordered. The first respondent has filed a counter-affidavit and in Paragraph No.6, took a stand that though the petitioner had levelled harassment charges against the third respondent, he could not explicitly pinpoint the nature of harassment and the time of incident and in Paragraph No.7, took a stand that if the third respondent is in fact trying to close the Ramaiah Cross Street starts from Ramaiah Road on the eastern side of Ramaiah Cross Street, then the first respondent would take appropriate action under Section 358 of the Madurai City Municipal Corporation Act, 1971, which says about removal of encroachment on public streets.



6. The learned counsel appearing for the petitioner drawing the attention of this Court to the counter-affidavit filed by the first respondent as well as the Humble Status Report filed by him and would submit that the first respondent has taken an inconsistent stand in the latest Status Report stating that the third respondent did not cause encroachment and hence, prays for appointment of an Advocate Commissioner to measure and note down the physical features of the locality, so that, this Court can pass appropriate orders, for removal of encroachment on the part of the third respondent by taking into consideration the public interest of the petitioner and others, who are being denied access from their premises in question.

7. The learned standing counsel appearing for the first respondent would submit that there is no inconsistent stand taken by the first respondent, for the reason that in the inspection, it has been found that the third respondent had constructed a fence inside his property and the allegation of encroachment made by the third respondent by constructing fence in a common pathway in T.S.No.337, denying the access, is totally wrong.

8. The learned counsel appearing for the third respondent has invited the attention of this Court to the counter-affidavit and would submit that the present Writ Petitioner is none other than the son of one R.Pushpavalli, who was also one of the plaintiffs in O.S.No.553 of 2001 on the file of the District Munsif, Madurai, which came to be dismissed and under the garb of filing Public Interest Litigation, in order to wreck vengeance, he has filed the present Writ Petition with an oblique motive. It is the further submission of the learned counsel for the third respondent that he is the bonafide purchaser of the suit properties and therefore, the prayer sought for by the petitioner per se unsustainable for the reason that the petitioner had deliberately suppressed the earlier civil proceedings and approached this Court with unclean hands and as such, he is not entitled to seek indulgence from this Court and prays for dismissal of this Writ Petition.

9. This Court heard the rival submissions and also perused the materials placed before it.

10. In the light of the stand taken by the first respondent in the Status Report, stating that the third respondent did not encroach upon the public street and further that, he has put up a fence well within the boundaries of his property, this Court cannot issue any positive direction as to the removal of encroachment on the part of the third respondent. That apart, in the considered opinion of this Court, the points urged by the learned counsel appearing for the petitioner revolve around the adjudication of proceedings on disputed question of facts and ~~the case of law~~ ^{the Court} in exercise of its power under Article 226 of the Constitution of India, cannot venture and give it's finding on the factual aspect.



11. In the light of the reasons assigned above, the Writ Petition is dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Commissioner,
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Anna Maligai, Madurai - 20.

2. The Superintending Engineer,
O/o. the Superintending Engineer,
Tamil Nadu Electricity Board,
Race Course Road, Madurai - 2.

+1cc to M/S.R.Prabhu Ramachandran, Advocate SR.No. 42605
+1cc to M/S.N.S.Ponnaiah, Advocate SR.No. 42587
+1cc to M/S.R.R.Thamothar Raj, Advocate SR.No. 42904

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PM
JM/SKN RSK/SAR 1/01.02.2018/4P/6C