



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.08.2018

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

W.A(MD)No.1087 of 2018

and C.M.P(MD)Nos.7791 to 7793 of 2018

D.Sekar

... Appellant/Petitioner

Vs.

1.The District Collector,
Tirunelveli District.

2.The Revenue Divisional Officer,
Cheranmahadevi,
Tirunelveli District.

3.The Thasildar,
Cheranmahadevi Taluk,
Tirunelveli District.

4.The Local Planning Authority,
No.108, Trivandrum Road,
Palayamkottai, Tirunelveli,
Tirunelveli District.

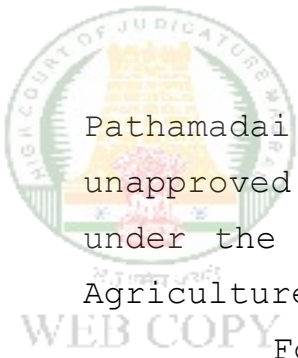
5.The Executive Officer,
Pathamadai Town Panchayat,
Tirunelveli District.

6.Mohammed Ali Jinnah ... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order, dated 23.07.2018 made in W.P(MD)No.16324 of 2017, on the file of this Court.

Prayer in WP(MD).No. 16324/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of mandamus directing the respondents 1 to 5 to prevent the illegal conversion of agricultural lands situated in 570, 571, 572 and 574



Pathamadaai Village, Tirunelveli District into housing plots through unapproved layout by the 6th respondent, without proper approval under the Tamil Nadu Change of Land Use (From Agriculture to Non-Agriculture purposes in Non-Planning Areas) Rules, 2017.

For Appellant : Mr.H.Arumugam

For RR 1 to 4 : Mr.Aayiram K.Selvakumar,
Additional Government Pleader.

For R - 5 : Mrs.J.Padmaavathi Devi,
Special Government Pleader.

For R - 6 : Mr.P.R.Prithiviraj

JUDGMENT

(Judgment of the Court was delivered by
PUSHPA SATHYANARAYANA,J.)

This Writ Appeal is directed against the order dated 23.07.2018 passed in W.P(MD)No.16324 of 2017.

2. The appellant/writ petitioner is the owner of the property in Survey Nos.566/1, 556/2, 566/3B-1A, 577/4, 563/1A, 569, 570 and 571 at Pathamadaai Village, Tirunelveli District. According to him, his family members are eking out their livelihood only through this land. The source of irrigation for the above said land is from the Tank, namely Pottaikulam situated in Survey No.581, which is also evident from the field map filed in the typed-set of papers. It is also admitted that there is a common Well available in Survey No.570 and it is maintained by all the co-owners of the land. It is also further admitted that the odai carrying water from the Pottaikulam Tank starts from the sluice on the Northern side of the Tank and it run towards North in Survey Nos.570, 573 and 574 and also in Survey Nos.570 and 569. The said odai is said to be common for all the land owners. Any obliteration of the same would deprive the water flow to the other land and would destroy the agricultural activities. The sixth respondent is the purchaser of some of the lands in the said survey numbers from the joint owners.

3. It is the allegation of the appellant/writ petitioner that the sixth respondent is converting the said agricultural land into a lay out and attempting to sell individual plots. In the process of converting the land into house sites, the sixth respondent is alleged to have destroy the water channel and also the fence. As stated earlier, the Well is also a common Well, which according to the appellant/writ petitioner, is being attempted by the sixth respondent to close the same. The appellant/writ petitioner, therefore, had given representation on 05.06.2017 to the District Collector, who is the first respondent herein, requesting him not to issue "No Objection Certificate" for converting the agricultural land into a house site. The appellant/writ petitioner also made yet



another representation on 16.08.2017 to the Sub-Collector, Cheranmahadevi to effect a spot inspection and stop the unlawful activities of the sixth respondent from converting the agricultural land into a house site, but the Deputy Director of Agriculture, Tirunelveli, issued a "No Objection Certificate", dated 04.08.2017 stating that after spot inspection, it was found that the lands are not cultivated and remained as barren lands for the past six years. Challenging the said conversion which would be detrimental to the appellant/writ petitioner's land, a Writ of Mandamus was filed by the appellant/writ petitioner directing the respondents 1 to 5 to prevent the illegal prevention of the agricultural lands.

4. G.O.Ms.No.79, dated 04.05.2017, Housing and Urban Development [UD4(3)] Department, had published the notification pursuant to Section 47-A of the Tamil Nadu Town and Country Planning Act, 1971. The said Rules relate to the change of land use from agricultural to non-agricultural purpose in non-planning areas. The said Rules provides for the procedure to be followed from making an application and obtaining the concurrence of the Director. Rule 6 prescribes the Guidelines to be followed by the Collector for giving his prior concurrence. Rule 7 prescribes the guidelines to be followed by the Director for giving his prior concurrence. It is only after the satisfaction by the Collector that the land in which the development is proposed does not fall in public water body like channel, canal, tank, lake, river etc., the concurrence has to be issued.

5. When the case of the appellant/writ petitioner is that the channel is being obliterated by the sixth respondent, the Collector can cause an inspection with Deputy Director of Town and Country Planning and other officials to satisfy himself with respect to the status of the land as in the revenue records and the development around the proposed site.

6. Be that as it may, the complaint of the appellant/writ petitioner is that the subsequent purchaser, namely the sixth respondent cannot be allowed to convert the agricultural land into a house site. Even if it is permitted to do so, the channel passing through his land to the other adjacent owners should not be disturbed or closed and that is the only grievance of the appellant/writ petitioner.

7. In view of the above, the authorities 1 to 5 are directed to ensure that the act of the sixth respondent in converting the agricultural land into house site do not get obstructed or affected and shall not prevent the source of ground water in and around the said land before sanctioning any permission. The said direction should be followed by the authorities in its letter and spirit, as per the above referred Rules. The authorities are also directed to issue notice to the appellant/writ petitioner, if required. In the event there is a violation of the above said Rules by the



authorities or the sixth respondent, it is open to the appellant/writ petitioner to approach this Court.

8. With the above directions, this Writ Appeal is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/
Assistant Registrar (CS-III)

/True copy/

Sub Assistant Registrar (CS-I)

To

- 1.The District Collector,
Tirunelveli District.
- 2.The Revenue Divisional Officer,
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- 4.The Local Planning Authority,
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Tirunelveli District.
- 5.The Executive Officer,
Pathamadai Town Panchayat,
Tirunelveli District.

+1cc to Mr.H.Arumugam, Advocate, SR.No.80144
+1cc to Mr.P.R.Prithiviraj, Advocate, SR.No.79821
+1cc to M/s.Special Government Pleader,SR.No. 79954

W.A(MD)No.1087 of 2018
23.08.2018

PS
KK/RP/SAR-1/04.09.2018/4P-9C