

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.16833 of 2016
and
WMP.No.14450 OF 2016

1. C.Prabhu
2. C.Sivakumar
3. S.Senthilkumar
4. P.Bakchand Jain
5. K.Chinnasamy Gounder
6. C.Bakiyalakshmi
7. M.Ponnusamy .. Petitioners

-vs-

1. The District Collector
O/o the District Collector
Erode District, Erode
2. The District Revenue Divisional Officer
Erode District, Erode
3. The Deputy Director
Geology and Mining, Collectorate
Erode 638 011
(R3 impleaded as per order dated
1.8.2016 in WMP No.22646 of 2016
in WP No.16833 of 2016) .. Respondents

Petition under Article 226 of the Constitution of India,
praying for the issue of a Writ of Certiorari, to call for the
records relating to the proceedings of the second respondent in
Na.Ka.1753/2016/Aa1 dated 18.04.2016 and quash the same.

For Petitioners:: Mrs.S.Meenakumari

For Respondents:: Mrs.P.Rajalakshmi
Additional Government Pleader

ORDER

The petitioners have come to this Court questioning the correctness of the impugned order dated 18.4.2016 passed by the Revenue Divisional Officer, Erode, the second respondent herein, wherein the second respondent has indicated that till the enquiry is complete on the complaint given by Mr.K.V.Ponnaiyan in respect of the land covered in Survey No.582/2, the petitioners/pattadhars cannot proceed with any agricultural activity in their land.

2. Learned counsel for the petitioners submitted that when the petitioners are the absolute owners of the land comprised in Survey No.582/2 at Chennimalai Village, Perundurai Taluk, Erode District measuring an extent of 6.47 acres, as per the pattas issued by the revenue authorities from the year 1927, and that they have been in possession of the same, for the reason that the land is in hillock area, the petitioners have taken steps to level the land for the purpose of utilising the same for agricultural and other purposes. Even the adjacent lands were also levelled by various persons and sold out as housing plots. One Mr.Prakash also flattened the place and fenced it. He had also proposed housing plots thereon. This apart, there are about 300 residential houses built up and also a Government High School near their land. Besides, a solid waste management godown is also in existence within 1 KM radius to the land of the petitioners. In addition thereto, the Government also have acquired some lands for LBP Ayacut within 1000 feet radius from the land of the petitioners. Therefore, when there is a school nearer to the land of the petitioners and also a solid waste management godown located within 1 KM radius from the land of the petitioners, the petitioners cannot be prevented from levelling the same only for the purpose of utilising the land in question for agricultural and other purposes. Hence, when they applied to the District Collector, Erode, the first respondent herein on 18.1.2016 seeking permission to level their land, they came to know that one organization called "Iyarkai Vala Padhukappu Iyakkam" had submitted their objections to the Revenue Divisional Officer, Erode not to permit the levelling work in the hill area, as this would affect the nature and also cause soil erosion by breaking the hill rocks available in the land of the petitioners. Based on the complaint, the impugned order has been passed by the second respondent stating that the petitioners cannot level their land. Only if the respondents find that the petitioners are mining the land illegally without getting any prior approval or permission from the competent authority, they can take action. But for levelling the land by the pattadhars, the respondents cannot have any objection. Even if there is an objection, the same has to be overruled, citing a reason that the petitioners are only levelling their land.

Without doing so, the respondents are unnecessarily preventing the petitioners from levelling their own land. The learned counsel further submitted that the petitioners have also filed an affidavit of undertaking to the effect that they will not cut any trees from their land and further undertaken that they will not take even a handful of sand outside their patta land and only request the respondents to permit them to level their patta land.

3. A detailed counter affidavit has been filed by the Revenue Divisional Officer, Erode, the second respondent herein stating that after a representation was given by the petitioners on 18.1.2016 to the District Collector, Erode to grant them permission to level the ground soil and also to remove the ups and downs on the ground to enable them to carry on the agricultural work, the first respondent has not given permission to do even the levelling work. However, the petitioners started to do the levelling work in their field on 27.3.2016. In the meanwhile, Chennimalai Iyarkai Vala Padhukappu Iyakkam objected to the levelling work undertaken by the petitioners. Therefore, the Tahsildar, Perundurai Taluk conducted conciliatory talks with the members of the Iyarkai Vala Padhukappu Iyakkam along with the writ petitioners in the Perundurai Taluk Office and submitted a detailed report to the District Collector, Erode and the Revenue Divisional Officer, Erode informing both the respondents 1 & 2 that the land in question has been in an uneven portion, as the northern side of the land is highly elevated and the southern side is lying low. Although the petitioners have deposed before the authorities that they are only going to level the uneven patta land to do agricultural activities in their land, on an earlier occasion, in the year 2010, when one Mr.Sridhar got permission from the District Collector to dig out gravel soil from S.F.No.585, which is also lying adjacent to the land of the petitioners, the said Mr.Sridhar almost removed the gravel soil from the field. In view thereof, the same Iyarkai Vala Padhukaappu Iyakkam headed by its coordinator Mr.K.V.Ponnaiyan staged a big agitation and hunger strike on 10.6.2011 with the participation of senior politicians and 40 organizations in Chennimalai. A human chain agitation in and around Chennimalai was also conducted to save the hilly terrain of Chennimalai and also to safeguard the ecology of Chennimalai. In view of the above procession and meetings conducted by various pattadhars, the District Collector also rushed up a team of officials from the Geology and Mining Department headed by the Mining Director to inspect the quarrying field in S.F.No.585 and to measure the entire area from where the gravel soil was taken out. Based on the report, the District Collector, Erode also, after conducting enquiry with the licensee Mr.P.Sridhar, Kanjikoil Village, Perundurai Taluk on 27.6.2011, cancelled the licence granted to the said

quarry licensee. Aggrieved by the said order, Mr.P.Sridhar also filed W.P.No.20877 of 2011 before this Court and this Court, by order dated 27.9.2011, directed the Commissioner (Geology and Mining), Chennai to consider the appeal preferred by Mr.P.Sridhar dated 5.7.2011 in accordance with law, following the procedure contemplated under the relevant rules, after affording reasonable opportunity to all parties concerned within six weeks. When the matter stands as above, the petitioners presented a petition to the first respondent on 18.1.2016 requesting permission to level the uneven patta land in S.F.No.582/2 in Chennimalai village. Since the petitioners have proceeded to level the land without obtaining prior permission during the pendency of their representation before the first respondent, based on the objections, the impugned order has been passed by the second respondent.

4. Heard the learned counsel for the petitioners and the learned Additional Government Pleader for the respondents.

5. The counter affidavit filed by the second respondent shows that one Mr.P.Sridhar, a resident of Kanjikoil Village, Perundurai Taluk, had proceeded to quarry the field in S.F.No.585 in Chennimalai village, which was objected by the Iyarkai Vala Padhukaappu Iyakkam headed by its coordinator and other persons. After the objectors intensified their agitation, the District Collector had passed an order not to permit the quarrying operation in the hillock area in respect of the said survey field. But the case of the petitioners stands on a different footing. It is claimed that the petitioners are the pattadhars of the land covered in S.F.582/2, Chennimalai village to an extent of 6.47 acres. Since the petitioners have repeatedly claimed and also have filed an additional affidavit of undertaking that they are not going to quarry, but only going to level the land to utilise the same for agricultural purpose, this Court, accepting the undertaking given by the petitioners in paragraph-8 of the additional affidavit, which reads as follows,

"8. I further submit that we hereby undertake that there are no trees in our patta land and we will not cutoff any trees in our land. Further we also undertake that we seek permission only to level our lands and will not take even hand full of sand, outside our patta land.",

taking note of the factor that the petitioners, being pattadhars, are only going to level their land as undertook by them, is inclined to interfere with the impugned order. Accordingly, while quashing the impugned order, it is made clear that if the petitioners, in the guise of levelling the land,

make any attempt to quarry the land without any permission from the respondents, it is for them to take appropriate action. With this liberty to the respondents, the writ petition stands disposed of. Consequently, W.M.P.No.14450 of 2016 is closed. No costs.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector
O/o the District Collector
Erode District
Erode
2. The Revenue Divisional Officer
Erode District
Erode
3. The Deputy Director
Geology and Mining
Collectorate
Erode 638 011

+1cc to Mr.D.Blachandar, Advocate, S.R.No.1291
+1cc to the Government Pleader, S.R.No. 1924

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W.P.No.16833 of 2016

AD (CO)
GN (04/02/2019)

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