

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.12.2019

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.No.33788 of 2019
and
W.M.P.No.34292 of 2019

M.S.Loganathan .. Petitioner

..Vs..

1.The District Collector,
Erode District
Erode.

2.The Special Officer
Avalpoondurai
Panchayath Office,
Erode Taluk,
Erode 638115

...Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, forbearing the respondents from putting up construction in S.No.1971/37, classified as PAVADI, to an extent of 0.04.52 Punjai Hectares in Avalpoondurai Village, Avalpoondurai Panchayat, Erode Taluk and District till the Disposal of O.S.No.446 of 2016 on the file of I Additional District Munsif, Erode.

For Petitioner : Mr.S.Kaithamalai Kumaran
For Respondents : Mr. R.Govindaswamy
Special Government Pleader

O R D E R

The Writ Petition has been filed in the nature of mandamus by M.S.Loganathan S/o Somasundaram seeking a restraint order against the respondents namely the District Collector of Erode and the Special Officer, Avalpoondurai Panchayat office, Erode, from putting up any construction in Survey No.1971/37 classified as PAVADI to an extent of 0.04.52 Punjai Hectare at Avalpoondurai Village, Avalpoondurai panchayat, Erode, till disposal of O.S.No.446/2016 on the file of the I Additional District Munsif, Erode. O.S.No.446/2016 has been filed by five plaintiffs. The present Writ petitioner is the 6th plaintiff in the suit. The 1st defendant is the Executive Officer., 2nd

defendant is the Tashsildar and 3rd defendant is the District Collector and the 4th defendant to 32nd defendants are private individuals. In the said suit, the plaintiffs have sought a declaration, declaring the right of plaintiffs and the weaving community residing in and around the suit property to use the suit property as PAVADI and their title over the same. On 05.09.2019, the suit was dismissed for default. The order passed by the learned I Additional Munsif Court is extracted below for ready reference :

'Plaintiff called absent, In spite of repeated adjournments trial is not yet commenced on the plaintiffs side. The suit was posted for trial in the list on 13.08.2019 itself. In spite of conditional order passed, the plaintiffs do not present and commence the trial. Hence, the suit is dismissed for default. No costs.'

The suit had been filed for more or less, the same relief namely for injunction against the respondents from putting up any further construction.

2.Mr.R.Govindaswamy learned Special Government Pleader submitted that subsequent to the dismissal of the suit, the District Collector has passed proceedings on 12.11.2019 in No.34283/2016/21 whereby the land was reclassified as Sarkar Promboke land, Pavadi. It is stated that necessary public notices have been given before reclassification. The learned Special Government Pleader submits, that without challenging the proceedings dated 12.11.2019, the petitioner has filed the Writ Petition seeking to restrain the respondents from putting up any construction of public bus stand till disposal of the suit, which relief, according to him is not maintainable.

3.On the other hand, the learned counsel for the petitioner states that the suit was dismissed on 05.09.2019 and an application to restore the suit was filed on 04.10.2019 and it is only thereafter did the District Collector pass the said order.

4.It is seen from the order of the learned I Additional District Munsif that the suit was posted for trial on 13.08.2019 itself and even though further opportunities were granted, the plaintiffs therein have failed to commence the trial and it is only for that reason that the suit was dismissed. Therefore, the plaintiffs cannot later blame the respondents herein for their acts after the dismissal of the suit. If the present petitioner is one of the plaintiff's in the suit then he should have shown interest in proceeding with the suit with due diligence. The trial should have commenced and by now the suit itself could have been disposed on merits.

5. Subsequent to the order of the District Collector, this land was reclassified as Sarkar Promboke land, Pavadi. It is seen that possession certificate has also been given on 14.11.2019. Whether the Land Revenue Inspector has handed over possession to the Deputy Director, Municipality Administration and Water Distribution Department, Erode, in respect of the land is not a matter of consideration before this Court. After having handed over possession of the land, it is stated that construction of public bus stand has commenced. When the present petitioner along with others obstructed the construction, FIR No.273/2019 has been registered under Sections 147, 294(b), 341, 353, 506(i) IPC.

6. It must also be kept in mind, that there was an earlier litigation in W.P.No.11191/99 with respect to the very same land. By an order dated 01.08.2008, a Division Bench of this Court disposed of the Writ Petition. In the order, the Division Bench extracted the counter of the respondent Officials, wherein it has been stated that the Tahsildar, Erode has been instructed to preserve the land for public purposes.

7. It is now stated that land will be allotted to the Government Department after following due process. As on date, there is a proposal to put up a public bus stand.

8. In view of the facts, particularly, since the Division Bench of this Court had directed that the land shall be used only for public purpose, and construction of the bus stand and toilet facilities are only for public purposes and the land has also been reclassified as Sarkar Promboke land Pavadi, and the possession has also been handed over for construction purposes at this stage a mandamus cannot be issued. If really the petitioner has any grievance, he must pursue the suit or he must challenge the order of the Collector on reclassification of the lands. I fear I am not able to concede the request of the petitioner. Hence this Writ Petition is dismissed. No Costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

vsn

To,

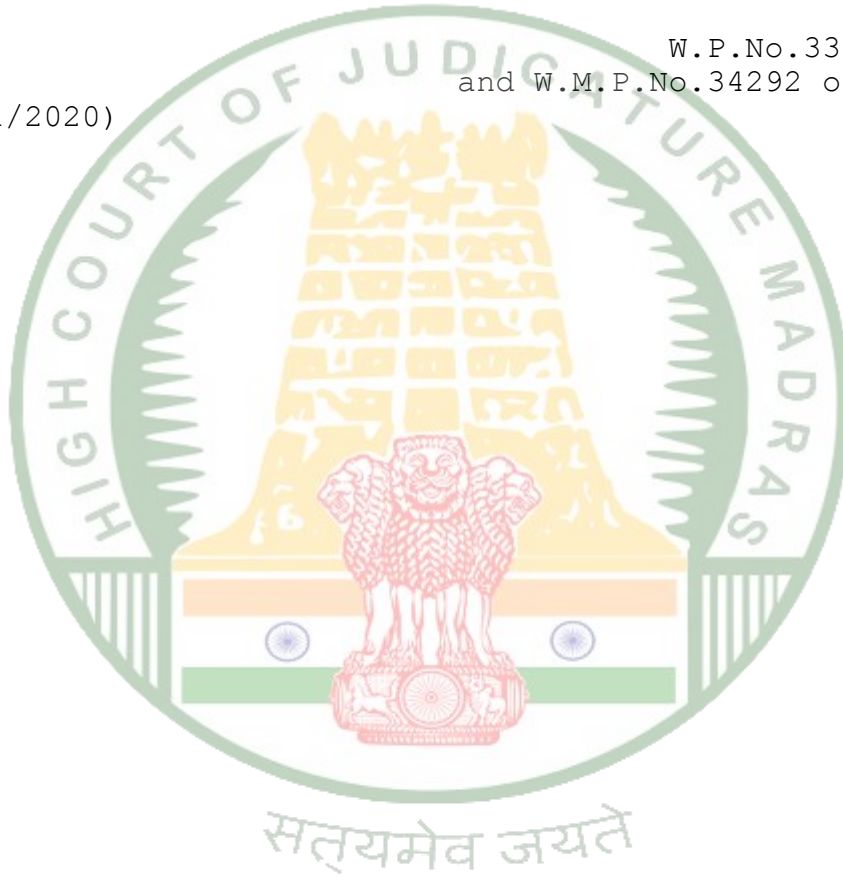
1.The District Collector,
Erode District, Erode.

2.The Special Officer
Avalpoondurai, Panchayath Office,
Erode Taluk,
Erode 638115

+lcc to Mr.S.Kaithamalai Kumaran, Advocate SR.No. 104422

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A.SK(30/01/2020)



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