

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 25.01.2019

Orders Pronounced on : 31.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

W.P.No.29852 of 2017

and

W.M.P.No.32218 of 2017

Maharaja

.. Petitioner

Vs.

1. The Assistant Divisional Engineer,
Highways, Bhavani Taluk,
Erode District.
2. The District Collector,
Bhavani Taluk, Erode District.
3. The Tahsildar,
Bhavani Taluk, Erode District.
4. The Commissioner,
Bhavani Municipal Corporation,
Bhavani Taluk, Erode District.
5. The Superintendent of Police,
Bhavani Taluk, Erode District.
6. The Deputy Superintendent of Police,
Bhavani Taluk, Erode District.
7. The Inspector of Police,
Bhavani Police Station,
Bhavai, Erode District.
8. A.Gurusamy
(Representing Sengutha Mudhaliyar
Weaving Community, Mudhaliyar Street,
Bhavani Taluk, Erode)

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the Respondent Nos.2 to 7 to remove all the fencing pillar stones laid down by the eighth respondent by encroaching the land and

restore the land on its original nature and kept open for the usage of villagers and weavers.

For Petitioner : Mr.V.Vijayakumar for Mr.S.Sivakumar

For Respondents: Mr.S.N.Parthasarathy, Govt. Advocate for
RR-1 to 3 and RR-5 to 7

Mr.P.Srinivas for R-4

Mr.G.Masilamani,
Senior Counsel for Ms.P.T.Ramadevi

ORDER

M.VENUGOPAL, J

The Petitioner has filed this Writ Petition for issuance of a Writ of Mandamus to direct the Respondent Nos.2 to 7 to remove all the Fencing Pillar Stones laid by the Eighth Respondent by encroaching the Land and restore the Land to its original nature and keep it open for usage of villagers and weavers.

2. Heard both sides and perused the materials available on record.

3. According to the Petitioner, he is residing in the Address at No.38, Pavadi Street, Bhavani Post and Taluk, Erode District, which has a frontage in the "Pavadi Land" commonly known as "Pavadi Rettukara Theru". The Land in front of the Petitioner's house is a "Natham Poramboke" and forms part of the said "Pavadi Rettukara Theru", which exists from time immemorial. The entire Land in Survey Field No.82 is shown as "Pavadi Rettukara Street-120" in the Revenue Records. In fact, the Land between the Petitioner's house and "Thar Road" is kept vacant for the purpose of use of his villagers and viewers for starching the Yarn and preparing the Yarn ready for the purpose of weaving in handlooms. As a matter of fact, the said Land is left open as "Natham Poramboke" and that the entire Land is commonly called as "Pavadi Street" and the other side of the Land is a State Highway leading Erode-Bangalore via Mettur.

4. The stand of the Petitioner is that the Eighth Respondent had filed a Civil Suit in O.S.No.355 of 1999 on the file of the First Additional District Munsif Court, Bhavani, praying for a Decree in respect of Mandatory Injunction and for Declaring the Easementary Rights for utilising the Land for Weaver's usage and for consequential prayer of Permanent Injunction against the Respondent Nos.1 to 4. Indeed, the Suit in O.S.No.355 of 1999 was tried along with the Suits in O.S.Nos.149 of 1999 and 224 of 2000. After completion of joint trial, a Decree for Easementary Rights and Injunction was granted in favour of the Eighth Respondent and in respect of the relief of Mandatory Injunction,

the Suit was dismissed by the Trial Court. As against the said Judgment and Decree of the trial Court, before the First Appellate Court, an Appeal in A.S.No.30 of 2004 was filed before the Sub-Court, Bhavani, in which, the Decree granted in favour of the Eighth Respondent was set aside. As an aggrieved person, the Eighth Respondent preferred a Second Appeal in S.A.No.340 of 2005 before this Court and the same was allowed by this Court on 10.02.2012 by restoring the Trial Court's Decree granted in favour of the Eighth Respondent and resultantly, the Judgment and Decree of the First Appellate Court was set aside. In reality, the Eighth Respondent is enjoying the Easementary Right with Permanent injunction on the Suit Property, which is the subject Land in the present Writ Petition.

5. At this stage, the Learned Counsel for the Petitioner submits that the Eighth Respondent and his hench-men, all of a sudden, on 13.11.2017, laid Fencing Pillar Stones in 5 feet gap surrounding the entire "Natham Poramboke" Pavadi Street Land, as if it is their own private Land. They have also closed the frontage and Road approach of the Petitioner's house in the said "Pavadi Rettukara Theru" by Fencing the same and prevented their "Ingress and Egress" to the outer world. Due to high-handed and illegal Encroachment made by the Eighth Respondent and his hench-men, the Petitioner's neighbours and the dwellers of the entire sub-street to "Pavadi Rettukara Street" are suffering. The Petitioner, along with the residents and the public, resisted the act of the Eighth Respondent and his hench-men in Encroaching upon the Property by complaining the same to the Respondent Nos.6 and 7. However, the Respondent Nos.6 and 7 threatened them, stating that the Eighth Respondent is armed with Civil Court's Order and if he is prevented by them, then he will arrest and put them in Jail. Thereupon, the Petitioner, along with others, went to the Office of the Second Respondent/District Collector, Bhavani Taluk, Erode District and the Fifth Respondent/Superintendent of Police, Bhavani Taluk, Erode District, on 14.11.2017 to complaint about the same. But, the Petitioner and others could not meet them and they were sent away by their Officials forcefully.

6. Inasmuch the Respondent Nos.1 to 4 had not taken any action against the Eighth Respondent in accordance with the Civil Court's Order and failed in preventing the Encroachment made by laying the Fencing Stone Pillars around the Property in the 5 feet gap and in the middle of the Property as well, the Petitioner is perforced to file the present Writ Petition in directing the Respondent Nos.2 to 7 to remove all the Fencing Pillar Stones laid by the Eighth Respondent by Encroaching upon the Land and restore the Land to its original nature and keep it open for the usage of Villagers and Weavers.

7. The Learned Counsel for the Petitioner cites a judgment dated 07.12.2018 of the Honourable Supreme Court in the case of "Rajasthan Housing Board and another Vs. Chandi Bai and others", reported in CDJ 2018 SC 1286 (in Civil Appeal No.11912 of 2018

arising out of Special Leave Petition (Civil). No.15455 of 2015), wherein at paragraph 21, it is observed as under:

"21. The remedy of the respondents, if any, was to claim a compensation from Doonga by seeking reference under Section 18 or Section 30 of the Land Acquisition Act or to file a civil suit against him to recover compensation on the basis of title. A civil suit to invalidate the land acquisition is not maintainable. The trial court has committed grave error of law while decreeing the suit. At least we expected the High Court to be careful in following the aforesaid catena of judgments passed by this Court in which law has been laid down succinctly."

and submits that Section 69 of the Tamil Nadu Highways Act, 2001, speaks of "act of over-riding contract and other laws, etc".

8. The Learned counsel for the Petitioner also refers to Section 60 of the Tamil Nadu Highways Act, 2001, which relates to the duty of Village Administrative Officers (VAO) or other Revenue Officer by whatever designation known to prevent the destruction, removal, alternation or displacement of, or damage or injury, or tampering with any Survey mark or any mark showing the highway boundary, control line or building line.

9. In short, the plea of the Writ Petitioner is that "Fencing the Pillars" is undoubtedly an Encroachment.

10. Learned Counsel for the Fourth Respondent-Bhavani Municipality submits that as per the findings of the Civil Court, the members of the Weaving Community can have their Stones in the land and use them for their weaving activities and also it was held that the Stones can be erected and repaired by them. Moreover, in terms of G.O.(D).No.384, Municipal Administration and Water Supply Department, dated 13.08.1999, the entire "Pavadi Street" was handed over to the Highways Department and it is under their care and that the Fourth Respondent and the Highways Department are bound by the Judgment of this Court in S.A.No.340 of 2005.

11. The Learned Counsel for the Fourth Respondent proceeds to point out that as on date, the 'Pavadi Land' is covered with Stones Pillars of about 3 feet in height. On the said Stones, the weavers carry out their work of weaving the textiles. Further that the Petitioner's averment that the access to their properties is blocked by the Stones erected, is an incorrect one, because of the reason that the houses are all unapproved constructions, which are all on the North of the "Pavadi Lands" and there is a six feet gap between the Stones and the Buildings on the North.

12. In effect, the stand of the Fourth Respondent/Municipality is that the weavers can utilise the

"Pavadi Lands" for their weaving activities, but they cannot Fence the said Lands and prevent the "Ingress and Egress" of anyone in the Lands.

13. It is the submission of the Learned Government Advocate for Respondent Nos.1 to 3 and 5 to 7 that the Writ Petition is not maintainable either in Law or on facts, and further that the Eighth Respondent is enjoying the Easementary Right with Permanent Injunction on the Suit Property, which is the subject Land in this Writ Petition. Furthermore, the Eighth Respondent had laid the Fencing Pillar Stones in the Street, which is hindrance for free flow of traffic. Also that the Eighth Respondent preferred S.A.No.340 of 2005 on the file of this Court, which was allowed on 10.02.2012, by restoring the Decree granted in favour of the Eighth Respondent by the Trial Court, thereby the Judgment and Decree of the First Appellate Court in A.S.No.30 of 2004 was set aside.

14. The Learned Senior Counsel appearing for the Eighth Respondent submits that the Eighth Respondent, his neighbours and their forefathers were using/used the Property "Pavadi" for their weaving activities and that the Eighth Respondent, on behalf of Senguntha Mudaliyar Weaving Community, instituted the Civil Suit in O.S.No.355 of 1999 against the Respondent Nos.1 to 4 to protect the "Pavadi" from being converted for other purposes like Public Meeting place, Vegetable Market, etc. Similarly, few people, on behalf of the residents of Rettu Kara Street and Pavadi Street, also filed a suit in O.S.No.224 of 2000 against the State and the Fourth Respondent and also against the Eighth Respondent, representing his Community.

15. Apart from the above, another Civil Suit was filed in O.S.No.149 of 1999 against the Fourth Respondent for safeguarding their right to use the Street. All these three Suits were tried together by the Trial Court and in the Suit filed by the Eighth Respondent, a Decree was passed and the other Suits were dismissed. An Appeal was preferred in A.S.No.30 of 2004 before the Sub-Court, Bhavani, as against the Judgment and Decree passed by the Trial Court in O.S.No.355 of 1999, and the said Appeal was allowed, against which, the Eighth Respondent filed Second Appeal in S.A.No.340 of 2005, which was allowed by this Court by restoring the Judgment and Decree of the Trial Court, vide Judgment dated 10.02.2012. As such, the Writ Petition preferred by the Petitioner is not maintainable, since the issue was already decided by this Court in the said Second Appeal.

16. The Learned Senior Counsel for the Eighth Respondent contends that on behalf of the residents of "Rettukara Street-120" and "Pavadi Street", who represented the present Writ Petitioner also, a Suit was filed in O.S.No.224 of 2000 against the State and the Fourth Respondent, and also against the Eighth Respondent, representing his Community, which came to be dismissed and as such, the present Writ Petition is not to be filed by the present Writ Petitioner.

17. The Learned Senior Counsel for the Eighth Respondent brings it to the notice of this Court that the Eighth Respondent figured as Plaintiff in O.S.No.355 of 1999 on the file of the First Additional District Munsif Court, Bhavani, Erode District and he instituted the said Suit in respect of the Suit Property called "Pavadi" on behalf of the near-by Weaving Community and residents. Further, the Learned Senior Counsel for the Eighth Respondent points out that in Suit in O.S.No.224 of 2000 on the file of the Trial Court, there are Four Plaintiffs and further that the Fourth Plaintiff S.R.Sahadevan, represented the residents of the Bhavani Town Retturkara Pavadi Street as well as the Plaintiffs. In this connection, the Learned Senior Counsel for the Eighth Respondent projects a legal argument that in view of the fact that the Writ Petitioner is a Resident at No.38, Pavadi Rettukara Street No.120, and that the suit in O.S.No.224 of 2000 as stated supra, was instituted wherein the said S.R.Sahadevan figured as the Fourth Plaintiff, who had filed the same on behalf of Bhavani Town Rettu Kara Pavadi Veethi Residents and also for the Plaintiffs. The Suit in O.S.No.224 of 2000 which was dismissed by the Trial Court on 17.09.2003 and further that the Eighth Respondent herein filed O.S.No.355 of 1999 as Plaintiff on behalf of Weaving Community People and for near-by Residents in respect of the Suit Property called "Pavadi", the filing of the present Writ Petition by the Petitioner is hit by the principle of "Res-Judicata", and as such, the present Writ Petition is not per-se maintainable before this Court.

18. Also that the Learned Senior Counsel for the Eighth Respondent, at the risk of repetition, brings it to the notice of this Court that the Suit filed by the Eighth Respondent in O.S.No.355 of 1999, which was originally Decreed in respect of the relief of Permanent Injunction and further that it was observed by the Trial Court that the Stones required for "Pavadi", were to be planted by the Plaintiffs therein, which was later reversed in the First Appeal in A.S.No.30 of 2004 and later by this Court in the Second Appeal in S.A.No.340 of 2005, in which the Judgment and Decree of the First Appellate Court was set aside and that of the Trial Court was restored, and significantly, in Paragraph 15 of the Judgment of this Court in the said Second Appeal in S.A.No.340 of 2005, by Judgment dated 10.02.2012, filed by the Eighth Respondent, this Court had observed the following:

"... The admission of 4th defendant in his written statement that those stones imbedded in the suit property have not been removed so far would show the present of the stones still in the suit property. Therefore, the prayer sought for by the plaintiff that they have got easementary right over the suit property for using it as Pavadi, cannot be rejected by the First Appellate Court. The

way in which the judgment was passed by the First Appellate Court would show that it was perverse. The courts are supposed to render justice on the basis of the rights accrued to the parties when they approached the Court when they want to establish their right before the Court. The plaintiff, having established their right shall not be refused from granting the relief sought for by them, without any valid reason."

and as such, the fact is that the "Stones in Pavadi" are always there and the tall claim of the Writ Petitioner as if the Eighth Respondent had laid the Stones now, is an incorrect one.

19. It is to be borne in mind that the Principle of "Res-judicata" is codified in the ingredients of Section 11 of the Civil Procedure Code (CPC), which comes into operative play pertaining to Civil Suits. The under-lying idea of the Rule of "Res-judicata" is that no human being should be vexed twice in respect of the same cause, in the considered opinion of this Court. To put it differently, the rule of conclusiveness is endorsed in Section 11 of CPC. The principle of "Res-judicata" is not a matter of procedure, but a Doctrine enunciated by Law Courts, keeping in mind the Larger Public Interest.

20. It is to be remembered that "Res-judicata" is cemented on two principles, namely (i) There should be an end to a litigation, and (ii) No one should be vexed twice for the same cause.

21. Apart from that, the words "heard and finally decided" in Section 11 CPC mean a matter on which the concerned Court of Law had exercised its Judicial Mind and after contest, the decisions were arrived at based on the arguments advanced.

22. In fact, "Res-judicata" is treated in Law as a wing of "Estoppel". Section 11 of the Civil Procedure Code not only bars a second decision of the same issue, but also prevents the concerned Court of Law in investigating the issue once again. Furthermore, the words occurring in Section 11 of the Civil Procedure Code, "No Court shall try any suit or issue" unerringly point out that even an investigation of the issue is not permissible one. More importantly, "Res-judicata" is a wider concept than the ingredients of Section 11 of the Civil Procedure Code. Moreover, "Res-judicata" includes "Constructive Res-judicata". Undoubtedly, the plea of "Res-judicata" is a legal plea and certainly it applies to adversarial pleadings, in the considered opinion of this Court.

23. At this stage, this Court aptly points out a decision of a Division Bench of this Court reported in 2007 (2) MLJ 384 (R.Kumar Vs. State of Tamil Nadu), wherein at Special Page No.390, in paragraphs 18, 19 and 20, it is observed as under:

"18. Learned senior counsel appearing for the appellants also stated that

he is not questioning the existence of power in the hands of the authorities, but only the exercise of the very power under a statute.

19. The learned Additional Advocate-General, countering the said arguments, drew our attention to Section 69 of the Tamil Nadu Highways Act, 1988, which has an overriding effect over other laws and the same is reproduced below:

"Section 69. Act to override contract and other laws, etc. - Save as otherwise provided in this Act, the provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law, custom, usage or contract or decree or order of a Court or other Authority."

20. Since both the enactments are made by the State Legislature and both contain a similar provisions, one has to find out as to which is the special law occupying the field. It is undoubtedly clear that with reference to the Highways, it is Highways Act, which holds the field. It is also a later enactment. Therefore, the argument of the learned senior counsel pressing Section 111 of the TNTCP Act (Tamil Nadu Town and Country Planning Act), to have overriding effect over the Highways Act, does not merit any attention by this Court."

24. In this connection, it is not out of place for this Court to make a relevant mention that Section 26 of the Tamil Nadu Highways Act, 2001, deals with prevention of unauthorised use of Highway land. Section 27 of the said Act empowers the Highways authority to cancel the permission granted for the use of Highway land for violating the conditions of permission. Section 28 of the said Act of 2001 empowers the Highways authority to remove the very Highways Land in unauthorised Encroachment. Further, Section 29 of the said Act of 2001 points out that the costs of removal of Encroachment or costs of protective work carried out in regard to any Encroachment, shall be paid by the Encroacher, failing which, the costs shall be recovered by disposing of the materials seized by public Auction. There is no iota of doubt that the power vests with the Authority on the Highways Act to fix the width of the Road.

25. As far as the present case is concerned, the Writ Petitioner is certainly bound by the Judgment of this Court in S.A.No.340 of 2005, dated 10.02.2012, wherein the Eighth

Respondent had figured as the Appellant/Plaintiff and the Respondent Nos.1 to 4 in the present Writ Petition had figured as the Respondents/Defendants. The finding of this Court in S.A.No.340 of 2005 that "plaintiffs having established their life shall not be refused from granting relief sought for by them without any valid reason," has become final, conclusive and binding on the parties. Even the other finding that the Plaintiffs have got Easementary Right over the Suit Property for using it as "Pavadi", cannot be rejected by the First Appellate Court, as observed by this Court in the said Judgment in S.A.No.340 of 2005, cannot be displaced/dislodged by anyone for that matter.

26. It cannot be gainsaid that as per Section 43 of the Indian Evidence Act, 1872, an Order/Judgment between inter-se parties, is very much binding on them.

27. Further, it is to be pointed out that Order 1 Rule 8 of the Civil Procedure Code applies to a case in which there are various parties having common interest. The power to grant permission to the concerned individuals under this Rule, is showered on the Court to be exercised after being satisfied that the subject matter of the Suit pertains to the interest of numerous persons or not. A Court of Law has the requisite power to give direction to sue in a representative capacity. After all, the representative Suit is only to establish a "Public Right" on behalf of the Community.

28. On a careful consideration of the respective contentions of the parties, and keeping in mind the Judgment of this Court in S.A.No.340 of 2005, whereby and whereunder, the Trial Court's Decree was restored in favour of the Eighth Respondent, resulting in the Judgment and Decree of the First Appellate Court in A.S.No.30 of 2004 being set aside and also considering the attendant facts and circumstances of the instant case in a conspectus fashion, this Court comes to an inevitable conclusion that the Petitioner and the Respondents are bound by the Judgment of this Court in S.A.No.340 of 2005. In fact, the Writ Petitioner/recent purchaser of the Property has no Locus-Standi to assail the usage of "Pavadi" by the weaving families living around the said "Pavadi" from time immemorial.

29. Insofar as the Fencing of Pillar Stones in the Street by the Eighth Respondent being hindrance to the free flow of traffic, is concerned, as claimed by the First Respondent in their counter affidavit at paragraph 5 of the present Writ Petition, as per Section 28 of the Tamil Nadu Highways Act, 2001, the First Respondent shall inspect the subject property and take necessary steps in removing the Fencing put up in the form of "Barbed Wire" in the Pillar Stones, after following due procedures enunciated under the Tamil Nadu Highways Act, 2001, by issuing prior notice to the concerned person/affected person and considering their written Representation, if any and pass reasoned speaking order, of course, after hearing the parties and also adhering to the Principles of Natural Justice, within

a period of four weeks from the date of Receipt of a copy of this Order.

30. With the above observations and directions, the Writ Petition is disposed of. No costs. Consequently, W.M.P. is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

cs

To

1. The Assistant Divisional Engineer,
Highways, Bhavani Taluk,
Erode District.
2. The District Collector,
Bhavani Taluk, Erode District.
3. The Tahsildar,
Bhavani Taluk, Erode District.
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Bhavani Taluk, Erode District.
7. The Inspector of Police,
Bhavani Police Station,
Bhavai, Erode District.

+1cc to M/s.P.T.Ramadevi, Advocate, S.R.No.8526
+1cc to the Government Pleader, S.R.No.8776
+5ccs to Mr.S.Sivakumar, Advocate, S.R.No.7873
+1cc to Mr.P.Srinivas, Advocate, S.R.No.9293

W.P.No.29852 of 2017

CA(CO)

rrs 13/03/2019