



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.08.2018

CORAM:

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THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.(MD) No.7805 of 2018

and

WMP(MD)No.7380 of 2018

Selvakumar ... Petitioner
vs.

1.The District Collector,
Kanyakumari District,
Nagercoil - 629 001.

2.The Executive Engineer,
PWD/Water Resource Organisation,
Kodhaiyar Sub Division,
Nagercoil.

3.The Assistant Engineer,
PWD/Water Resource Organisation,
Boothapandi,
Kanyakumari District.

4.The Tahsildar,
Thovalai Taluk,
Kanyakumari District.

5.Sathyam College of Engineering & Technology,
Aralvaimozhi,
Kanyakumari District.

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the order dated 24.01.2018 on the file of the 3rd respondent and quash the same and consequently direct the respondents to remove the encroachments committed by the 5th respondent in Survey Nos.813/2 and 810/1, Aralvaimozhi Town Panchayt, Aralvaimozhi, Kanyakumari District.

For Petitioner : Mr.Puhazh Gandhi

For R1 to R4 : Mr.VR.Shanmuganathan

<https://hcservices.ecourts.gov.in/hcservices/>

Special Government Pleader

For R5 : Mr.C.K.M.Appaji

**ORDER****[Order of the Court was made by T.RAJA, J.]**

This Writ Petition is directed against the impugned proceedings dated 24.01.2018 issued by the Assistant Engineer, PWD/Water Resource Organisation, Nagercoil at Kanyakumari District to quash the same and consequently direct the respondents to remove the encroachments made by Sathyam College of Engineering and Technology, Aralvaimozhi, Kanyakumari District/the fifth respondent herein in Survey Nos.813/2 and 810/1, Aralvaimozhi Town Panchayat, Kanyakumari District.

2.Learned counsel appearing for the petitioner pleaded that the petitioner who is a social worker and also a former Municipal Councillor of Aralvaimozhi Panchayat, has submitted that the fresh water pond (tank) situated in Survey Nos.813/2 and 810/1 at Aralvaimozhi Town Panchayat is the source of water for irrigation purpose and it is being utilised by the agriculturists and farmers, living in the vicinity. The rain water coming from Western Guards are collected through this fresh water tank, which in turn, supports the life line of agriculturists to cultivate the short term crops in the entire area. While so, the fifth respondent Engineering College, being an educational institution has wrongly encroached into the said fresh water tank falling in Survey Nos.813/2 and 810/1 and they have also constructed several buildings across the said fresh water tank. Moreover, they are also releasing the drainage water and waste water into the said tank, thereby polluting the entire tank.

3.The learned counsel, adding fuel to fire, would further submit that the Engineering College/fifth respondent herein, by constructing building across the channel, blocked the entire water source. As a result, poor farmers and public are not even able to use the water for irrigation purpose. The waste water and drainage water coming out from the fifth respondent college mixing up with the aforementioned fresh water channel becomes unfit for human consumption. In view thereof, a representation with sufficient proof like photographs, topo plan was given to the District Collector, Kanyakumari District/the first respondent herein on 22.11.2010, explaining clearly how the fifth respondent Engineering College has encroached not only the land covered in Survey Nos.813/2 and 810/1, but also polluted the entire fresh water channel and constructed various buildings across the said water tank blocking the entire water source. When the request was made to the first respondent to remove the encroachments in the Government Poramboke land, as this will pave the way for the livelihood of the innocent agriculturists living in this vicinity, no steps were taken. Therefore, the petitioner was constrained to give one more representation to the first respondent on 15.10.2012, seeking removal of encroachments made in Survey Nos. 813/2 and 810/1, which are Government poramboke lands and water body.



4. The petitioner received a letter from the Executive Engineer, PWD on 19.11.2012 informing him that the Tahsildar, Thalavai was requested to ascertain and demarcate the boundaries of encroachments made by the fifth respondent in Survey Nos. 813/2 and 810/1 and once the Tahsildar completes demarcation of boundaries of encroachments, suitable steps would be taken for removal of the encroachments. But, however, as per the said communication dated 19.11.2012, no action was taken with regard to removal of encroachments. Finally, the petitioner has come before this Court by filing a writ petition in WP(MD)No.18184 of 2013 praying to issue a writ of mandamus, directing the respondents 1 to 4 therein to take action on the representations dated 05.10.2010 and 15.10.2012 with regard to removal of the encroachments made by Sathyam Engineering College, the fifth respondent herein in Survey Nos.813/2 and 810/1, Aralvaimzhi Town Panchayat. This Court, after issuing notice, hearing the Special Government Pleader and after perusing the relevant records produced by all the parties, finding fault with the respondents that the representations given by the petitioner dated 05.10.2010 and 15.10.2012 were not considered, allowed the writ petition, directing the respondents 1 to 4 to consider the aforementioned representations as early as possible by giving an opportunity to the petitioner as well as to the fifth respondent. However, aggrieved by the said order, a review application in Rev.Appln(MD)No.8 of 2014 was filed by the fifth respondent Engineering College. Again, this Court, after considering all the materials on record, finding no merits in the review petition, dismissed the same on 31.01.2014, reiterating the directions given by this Court in WP(MD)No.18184 of 2013 on 11.11.2013. In spite of repeated orders dated 11.11.2013 passed in WP(MD)No.18184 of 2013 and another order dated 31.01.2014 by way of reminder in Rev.Appln (MD)No.8 of 2014, no action was taken. Therefore, the petitioner was constrained to issue contempt notice on 08.04.2014 to the contemnors requesting to take action on his representations.

5. In the meanwhile, taking advantage of receipt of Form-III issued by the third respondent, the fifth respondent, concealing the fact that there are two orders passed against them in WP(MD)No.18184 of 2013 dated 11.11.2013 and another order in Rev.Appln(MD)No.8 of 2014 dated 31.01.2014, wrongly filed a suit in O.S.No.107 of 2014 on the file of the Principal Sub Court, Nagercoil. A perusal of the plaint also does not show the aforementioned orders passed by this Court on 11.11.2013 and 31.01.2014, which clearly shows the intention of the fifth respondent to drag on the matter and prolong the action going to be taken by the official respondents. Further it is seen that the said suit is no way connected to the aforementioned Survey Nos.813/2 and 810/1 and therefore, it could be easily seen that the present impugned communication 24.01.2018 has been issued wrongly by the third respondent stating that in view of pendency of civil suit of O.S.No.107 of 2014 on the file of the Principal Sub Court, Nagercoil, they are unable to take action.



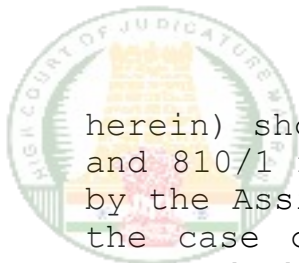
6.Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the respondents 1 to 4 submitted that when Form-III was issued against the fifth respondent/Engineering College asking them to vacate the encroached portions, failing which, action will be taken, assailing the said Form-III, the fifth respondent/Engineering College ought not to have filed the civil suit in O.S.No.107 of 2014 on the file of the Principal Sub Court, Nagercoil.

7.Heard the learned counsel for the parties.

8.We are at a loss to appreciate not only the encroachments put up by the Sathyam Engineering College, Aralvaimozhi, blocking the water course and polluting the fresh water tank but also the approach adopted by the third respondent, the Assistant Engineer, PWD/Water Resource Organisation. The reason is, when the fifth respondent filed a suit challenging the correctness of Form-III issued by the third respondent, in all fairness, the fifth respondent should have disclosed the two orders suffered by them in the plaint. On the other hand, a repeated perusal of the plaint, clearly shows that the fifth respondent has deliberately suppressed the two orders passed by this Court in WP(MD)No.18184 of 2013 on 11.11.2013 and in Rev.Appln(MD)No.8 of 2014 on 31.01.2014. Therefore, this Court informed the learned counsel appearing for the fifth respondent to take instructions whether they would remove the encroachments on their own or direction to be given to the respondents 1 to 4 to execute the previous directions issued by this Court for removal of encroachments.

9.When the matter was again taken up today, Mr.C.K.M.Appaji, learned counsel appearing for the fifth respondent sought time of six months for removal of encroachments, on the premise that various college buildings have been constructed and the students have to be accommodated conveniently in other place. But, this Court is unable to show any indulgence or leniency for removal of the encroachments. Further, the fifth respondent/ Engineering College should not unnecessarily prolong the matter, when the petitioner with all acceptable records exposed before this Court that they have encroached the Government Poramboke land and put up various buildings blocking the water course and also polluted the fresh water tank situated in Survey Nos.813/2 and 810/1 by draining out the toilet and waste water into the fresh water tank polluting the water unfit for human consumption.

10.At this stage, the learned counsel appearing for the fifth respondent submitted that there is no material to show that the fifth respondent has been polluting the fresh water tank by letting out all the waste water from the college toilet. But the communication dated 31.05.2018 addressed by the Assistant Engineer PWD to one Selvakumar, erstwhile 17th Ward Councillor, (petitioner



herein) shows the pollution of fresh water tank in Survey Nos. 813/2 and 810/1 made by the fifth respondent. The counter affidavit filed by the Assistant Engineer/the third respondent herein also supported the case of the petitioner that the fifth respondent has clearly encroached the land in Survey Nos. 813/2 and 810/1.

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11. Further, Form-II was issued almost four years ago on 20.01.2014 as per Rule 5 of the Tamil Nadu Protection of the Tanks and Eviction of Encroachment Act, 2007. After issuance of Form - II, Form-III under Rule 6(1) of the said Act was also issued on 10.03.2014. Only on receipt of Form-III on 10.03.2014, the said suit was filed. When the fifth respondent admittedly has not given any representation either at the stage of receiving Form-II way back on 20.01.2014 or subsequently on receipt of Form-III on 10.03.2014, the conduct of the fifth respondent shows that he has got nothing to offer either to Form-II or to Form-III. Therefore, we do not find any hesitation to direct the third respondent/Assistant Engineer, PWD/Water Resource Organization to remove the encroachments made in Survey Nos. 813/2 and 810/1 within a period of four weeks from the date of receipt of a copy of this order, if the fifth respondent fails to do the same.

12. Before paring with this case, we wish to mention that a suit in O.S.No.107 of 2014 on the file of the Principal Sub Court, Nagercoil was filed only after the two orders were passed by this Court in WP(MD)No.18184 of 2013 on 11.11.2013 and another order in Rev.Appln(MD)No.8 of 2014 on 31.01.2014. Therefore, pendency of civil suit with regard to removal of encroachments is nothing to do with the compliance of the orders passed by this Court.

13. Accordingly, the writ petition is allowed with the above direction and the impugned order dated 24.01.2018 is quashed. No costs. Consequently, WMP(MD)No.7380 of 2018 is closed.

14. Post the matter on 03.10.2018 for reporting compliance.

Sd/-

Assistant Registrar (WRITS)

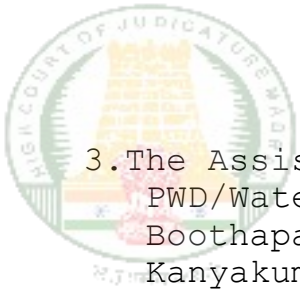
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Sub Assistant Registrar (CS-III)

To

1. The District Collector,
Kanyakumari District,
Nagercoil - 629 001.

2. The Executive Engineer,
PWD/Water Resource Organisation,
Rondiyar Sub Division,
Nagercoil.



3.The Assistant Engineer,
PWD/Water Resource Organisation,
Boothapandi,
Kanyakumari District.

4.The Tahsildar,
Thovalai Taluk,
Kanyakumari District.

COPY TO:
The Post Clerk,
Writ Posting,
Madurai Bench Of Madras High Court,
Madurai.

+1CC TO MR.C.K.M.APPAJI, ADVOCATE IN SR.No.81329.
+1CC TO MR.PUHAZH GANDHI ADVOCATE IN SR.No.81720.
+1CC TO SPECIAL GOVERNMENT PLEADER IN SR.No.81915.

MJ
DS RP SAR-3;04.09.2018; 6P/9C

W.P. (MD) No.7805 of 2018
30.08.2018