



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.18740 of 2014

and

M.P.(MD)No.1 of 2014 and W.M.P.(MD)No.10260 of 2016

and

Cont.P.(MD)No.665 of 2017

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W.P.(MD)No.18740 of 2014

M/s.Kanthimathi Plantations Pvt.Ltd.,
Patton Place P.O.,
Thiruvananthapuram - 695 004
represented by its Director &
authorized signatory
S.Lakshmana Sarma

... Petitioner

Vs.

- 1.The Tahsildar
Vilavancode Taluk,
Kuzhithurai Post
Kanyakumari District, Nagercoil,
Tamilnadu.
- 2.The District Collector,
Kanyakumari District,
Nagercoil, Tamilnadu.
- 3.The Revenue Divisional Officer,
Padmanabhapuram,
Thuckalay, Kanyakumari District.
- 4.The Assistant Divisional Engineer,
Highways Department,
Kuzhithurai,
Kanyakumari District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus directing the respondents to restore the status quo prevailing prior to 13.10.2014 by re-laying the fence illegally removed by them from the lands owned by the petitioner company in S.No.168 and 167/2 as more fully set out in the Schedule hereunder, and further forbear the respondents from any manner interfering with the ownership and possession of the lands mentioned in the schedule to this writ petition.

**Cont.P. (MD)No.665 of 2017**

M/s.Kanthimathi Plantations Pvt.Ltd.,
Pattom Place P.O.,
Thiruvananthapuram - 695 004
represented by its Director &
authorized signatory
S.Lakshmana Sarma

... Petitioner/Petitioner

Vs

Chitra
Assistant Divisional Engineer,
Highways Department,
Kuzhithurai,
Kanyakumari District-629 163. ... Respondent/4th Respondent

PRAYER : Petition filed under Section 11 of Contempt of Courts Act to issue notice of contempt to the respondent for willful disobedience of the order of ad-interim injunction dated 20.11.2014 passed by this Court in M.P.(MD)No.1 of 2014 in W.P.(MD)No.18740 of 2014.

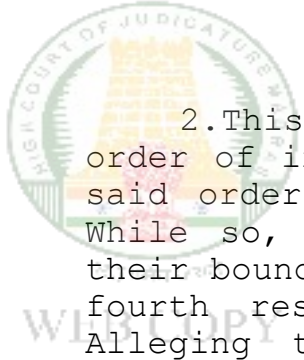
Prayer in M.P.(MD)No.1 of 2014 in W.P.(MD)No.18740 :

To pass an order of interim injunction orders pending the disposal of the present writ petition , for bearing and restraining the respondents from entering upon any portion of the lands of the petitioner , tampering with any structures contained therein, or interfering in any manner whatsoever with the rights of possession and ownership of the petitioner over the lands mentioned in the schedule to the WP.

For Petitioner	: Mr.Raguvarangopal
For Respondents	: Mr.R.Sethuraman, Special Government Pleader

ORDER

The writ petitioner is a Private Limited company, having rubber and coconut plantations etc., in Kadayal Village, Villavancode Taluk, Kanyakumari District. It is known as Kanthimathy estate. The fourth respondent herein issued a letter dated 01.02.2013 calling upon the writ petitioner to part with their lands to facilitate the expansion of Kuzhithurai - Alancholai - Arukarai road. The petitioner vide letter dated 08.02.2013 informed the fourth respondent that particulars have not been given. Thereafter to the shock and surprise of the writ petitioner, the fence put up by the petitioner was forcibly removed. That has necessitated the filing of this writ petition.



2.This Court while admitting this writ petition granted an order of interim injunction in favour of the writ petitioner. The said order of interim injunction has not been vacated till date. While so, according to the petitioner, the trees standing within their boundaries were earmarked for auctioning their usufructs. The fourth respondent has been conducting the auction every year. Alleging that it is a clear breach of the order of interim injunction granted by this Court, this writ petitioner filed Contempt Petition No.665 of 2017. The contempt petition was taken up along with the writ petition.

3.The fourth respondent is present in person before this Court. She informs the Court that even though, the usufructs were auctioned, the person who had taken the auction gave an undertaking that he would not pluck the usufructs. The fourth respondent therefore contended that the order passed by this Court has really not been violated.

4.The learned counsel on either side agreed that the road expansion work has since been completed. The petitioner only wants to restore the old fencing arrangement. Since the petitioner is apprehending resistance at the hands of the respondents, he has filed this writ petition.

5.Actually, the prayer made by the writ petitioner is for restoration of the status quo that prevailed prior to 13.10.2014. It is not in dispute that the writ petitioner filed O.S.No.31 of 1986 and O.S.No.68 of 1988 before the Sub Court, Kuzhithurai. The trial Court decreed both the suits on 20.09.1994. The Government, instead of filing two first appeals, chose to file only one appeal questioning the judgement and decree made in O.S.No.31 of 1986. By judgment dated 28.05.2001, the first appellate Court allowed the first appeal and remanded the matter to the file of the trial Court. Challenging the remand order, the petitioner filed C.M.A.(MD)No.1438 of 2001. By judgment and Decree dated 01.07.2011, this Court set aside the remand order and restored the judgment and decree passed by the trial Court. Thus as on date, the petitioner is having the judgment of the Civil Court declaring his right over the property in S.Nos.168 Part, 169 Part, 370 Part and whole of 167/2, Kaliyal, Vilavancode Taluk, Kanyakumari District.

6.Now the question that arises for consideration is whether the property, that is now under dispute, falls within the decreed suit schedule.

7.I am of the view that this issue can be resolved only if a proper survey exercise and demarcation is undertaken. The Tahsildar, Villavancode Taluk is directed to undertake and conclude the exercise of survey and demarcation in terms of the decree dated 20.09.1994 made in O.S.No.31 of 1986 on the file of the Sub Court, Kuzhithurai within a period of four months from the date of receipt of a copy of this order.



8.The learned counsel for the petitioner submitted that as a temporary measure he may be permitted to erect their fencing 2 Meters away from the end point of the existing road. The said request is accepted.

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9.At this stage, the learned counsel on either side submitted that in some connected proceedings, the State of Tamil Nadu has moved the Hon'ble Supreme Court of India and the proceedings pending there too pertain to the subject properties.

10.Ofcourse, the exercise to be undertaken by the first respondent would abide by the outcome of the proceedings that are now pending before the Hon'ble Supreme Court. Accordingly, W.P.(MD) No.18740 of 2014 is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

11.The contemnor has filed her counter affidavit expressing unconditional apology. The same stands accepted. Accordingly, Cont.P.(MD)No.665 of 2017 is closed. No costs.

Sd/-

Assistant Registrar (P AND A)

// True Copy //

Sub Assistant Registrar

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To

- 1.The Tahsildar
Vilavancode Taluk,
Kuzhithurai Post, Kanyakumari District,
Nagercoil, Tamilnadu.
- 2.The District Collector,
Kanyakumari District,
Nagercoil, Tamilnadu.
- 3.The Revenue Divisional Officer,
Padmanabhapuram,
Thuckalay, Kanyakumari District.



4.The Assistant Divisional Engineer,
Highways Department,
Kuzhithurai,
Kanyakumari District-629 163.

1 CC to M/s.K.PRABHAKAR, Advocate (SR-55524[F] dated 20/03/2019)

+1 CC to M/s.SPL GP (SR-55957[F] dated 22/03/2019)

W.P. (MD) No.18740 of 2014

and

Cont.P. (MD) No.665 of 2017

20.03.2019

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