

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2020

CORAM: THE HONOURABLE Mr.JUSTICE R.SUBRAMANIAN

CRP.No.1098 of 2018
and
CMP No.5782 of 2018

G.Raman

... Petitioner / Petitioner /
Plaintiff

Vs.

1.The Government of Tamil Nadu
Rep by its District Collector
Vellore and District.

2.The Tahsildar
Gudiyattam Taluk, Gudiyattam
Vellore District.

3.The Assistant Executive Engineer
PWD Irrigation Section
Gudiyattam Town
Vellore District.

..Respondents / Respondents /
Defendants 1 to 3

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order made in I.A.No.564 of 2017 in O.S.No.103 of 2017 on the file of the District Munsif Court, Gudiyattam, Vellore District, dated 23.01.2018.

For Petitioner : Mr.K.A.Ravindran
For Respondents : Mr.Y.T.Aravind Gosh

ORDER

The plaintiff in O.S.No.103 of 2017 on the file of the District Munsif Court, Gudiyattam, has come up with this revision, challenging an order dismissing his application for appointment of Advocate Commissioner to inspect the Perumbadi lake channel and to note down the encroachments, the flow of river water and to file a report.

2. The suit in O.S.No.103/2017 has been filed by the petitioner seeking damages to the tune of Rs.1,00,000/- for the

loss suffered by him due to non-maintenance of Perumbadi lake channel by the revenue officials. It is not in dispute that the question of encroachments over this channel has been the subject matter of several writ petitions and writ appeals before this Court. It is the grievance of the petitioner that despite several directions issued by this Court, the encroachments have not been removed, thereby affecting the flow of water in Perumbadi lake channel.

3. Pending suit, even before filing of written statement, the petitioner filed a petition for appointment of Advocate Commissioner to make a local inspection of the Perumbadi lake channel and note down the encroachments made therein. This application was resisted by the authorities contending that various orders passed by this Court have been enforced and encroachments have been removed. Therefore, according to the defendants, there is no justification in the application seeking inspection by the Advocate Commissioner. The trial Court accepted the defense and dismissed the application. Aggrieved, the petitioner has come up with this civil revision petition.

4. I have heard Mr.K.A.Ravindran, learned counsel for the petitioner and Mr.Y.T.Aravind Gosh, learned Government Advocate for the respondents.

5. Mr.K.A.Ravindran, learned counsel appearing for the petitioner would submit that despite the orders of this Court, encroachments have not been removed, which resulted in huge financial loss to the petitioner and also deprivation of his only source of living viz., agriculture. He would also contend that if only the respondents have removed the encroachments and there is no encroachment on the ground as on date, they would not have objected to the appointment of Advocate Commissioner. He would also fault the trial Court for concluding the question of encroachment is not relevant to the prayer sought for. He would point out that this very suit for damages is based on the plea that there has been no maintenance in lake channel and deprivation of water to his lands.

6. Contending contra, the learned Government Advocate appearing for the respondents would submit that pursuant to the orders passed by this Court in various writ petitions, all encroachments have been removed and there was not encroachments on ground as on today. He would also contend that there is no schedule in the suit, and in the absence of any schedule, there cannot be any inspection by the Commissioner.

7. I have considered the rival submissions. The suit is one for damages due deprivation of water for agriculture. The earlier proceedings would go to show that there were

encroachments in the channel and the respondents would now claim that the encroachments have been removed. The main contention of the petitioner is that because of the encroachments, the water flow in the channel was obstructed, resulting in depletion of ground water in that area and hence lands have become dry.

8. No doubt, it is for the plaintiff to prove that he has suffered damages. He can let in evidence to show that he had suffered damages and one such evidence is in the form of Commissioner Report, which would demonstrate whether there are encroachments in the channel or whether there is regular water flow in the channel. The report of the Commissioner will afford very valuable evidence that would enable the court to effectively adjudicate the issues that arise in the suit. By dismissing the said application, in my considered opinion, the District Munsif has deprived himself of an opportunity to have the best evidence on record. As regards the objection to the learned counsel's submission that there is no schedule to the suit and the area of inspection is not well defined, the answer is found in the very petition filed by the petitioner, wherein the petitioner seeks appointment of Commissioner to inspect the Perumbadi lake channel, note down the encroachments and flow of river water.

9. Therefore, I do not think that the trial Court is right in dismissing the application filed by the petitioner seeking appointment of Advocate Commissioner. If only the claim of the respondents that the encroachments are removed is true, they need not have opposed the application of the appointment of Advocate Commissioner as the stand would be vindicated if the Commissioner finds that there is encroachment.

10. In view of the above, the order of the trial Court is set aside. The Civil Revision Petition is allowed and the application in I.A.No.564 of 2017 in O.S.No.103 of 2017 will stand allowed. The trial Court is directed to appoint the Commissioner within 15 days from the date of receipt of a copy of the order, with a direction to inspect the Perumbadi lake channel and file a report with reference to the presence or absence of encroachments therein. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

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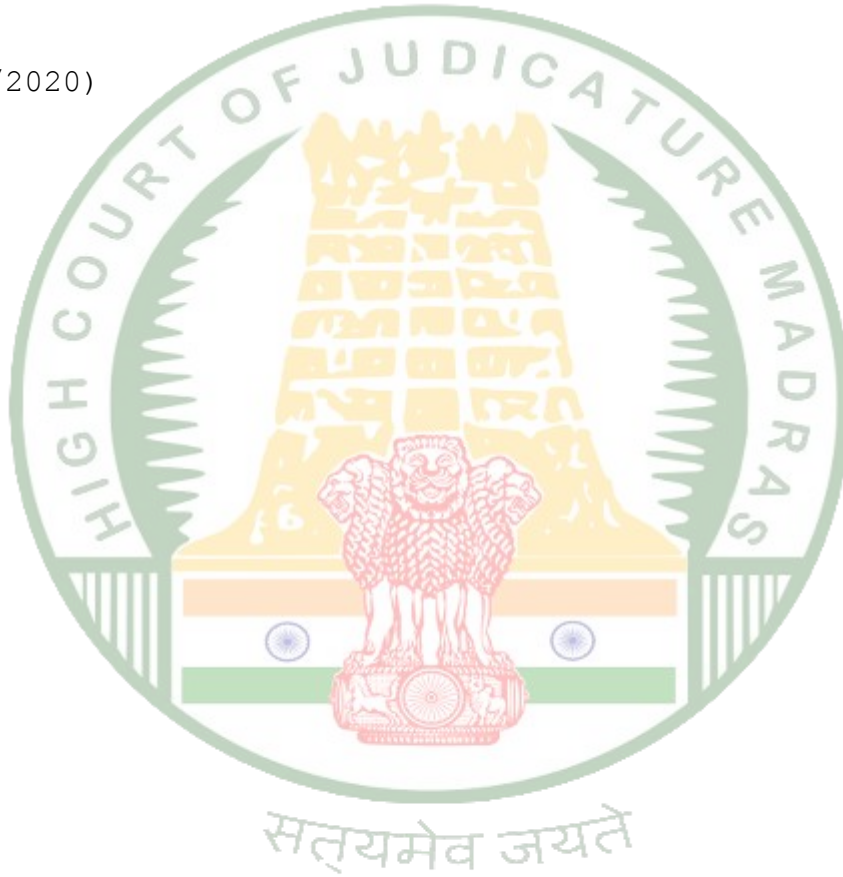
To:

1.The District Munsif
Gudiyattam
Vellore District.

+1 cc to The Special Government Pleader(C.S),High Court Madras
Sr.No. 26555

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MR(CO)
RMP(02/09/2020)



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