

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.10.2020

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MRS. JUSTICE R.HEMALATHA

WP.No.14817/2020

S.Desingu Raja

..Petitioner

Versus

1. The District Collector
District Collector Office
Salem.
2. The Tahsildar
Valapadi, Salem District.
3. The Taluk Surveyor
Valapady, Salem District.
4. The Executive Engineer
Public Works Department
Sarabanga Lift Irrigation Project
Namakkal.

5.Saravanan

.. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the respondents 2 and 3 to demarcate the water channel comprised in SF.No.4/1, 4/3B, 5/2, 5/3A, 14/16A, 14/4, 14/17A, 10/2A, 10/2C, 59/3B, 59/3A, 59/2C, 59/2E, 58/2, 58/3, 58/4A, 58/4B, 58/4C, 68/3 and others at Sarkar Valapadi Village, Valapadi Taluk and Salem District by fixing boundaries, record the said water channel [odai] in the revenue records and consequently direct them to remove the encroachments existing therein within an appropriate time.

For Petitioner : Mr.R.Nalliyappan

For RR 1 to 4 : Ms.R.J.Radhika
Government Advocate

ORDER

- (1) By consent, the writ petition is taken up for final disposal and is disposed of by this order.
- (2) Ms. R.J. Radhika, learned Government Advocate accepts notice on behalf of respondents 1 to 4.
- (3) The petitioner, on an earlier occasion, filed WP.No.1891/2016 against the respondents 4, 1 and 2, praying for issuance of a writ of mandamus, directing the 4th respondent herein to implement his order dated 12.04.2013 bearing Letter No133 Pala/e.Va.Aa/Va.Pi/Co.44/2013/ within the time stipulated by this Court and the said writ petition was entertained and the 4th respondent herein, being the 1st respondent in the said writ petition, has filed a counter affidavit in the said writ petition and it is relevant to extract the same:-

"3. It is humbly submitted that the writ petitioner is having agricultural land in Survey Field No.11. The land is agricultural land and the adjacent land in S.No.10/2C is also agricultural and patta land which belongs to one Mr. Selvakumar. The writ petitioner submitted representation dated 18.12.2012 for which, the first respondent vide letter No.133/Pala/E.Va.Aa/Va.Pi/Co.44/2013 dated 12.04.2013 informed to the writ petitioner that encroachment would be removed after fixing boundary by the 3rd respondent/Tahsildar. It is submitted the land was inspected by the Assistant Engineer on 03.05.2014 and it was found that the alleged encroachment mentioned in the representation dated 18.12.2012 is patta land and no odai was in existence. Hence the removal of encroachment does not arise."

- (4) The Division Bench of this Court, having taken note of the submission made by the learned Special Government Pleader that on proper inspection and demarcation, no encroachment of 'Odai [water way]' has been found, has dismissed the writ petition as nothing survives for adjudication.
- (5) The learned counsel for the petitioner has drawn the attention of this Court to the FMB Sketch and would submit that though the FMB sketch discloses the existence of a water way / water channel in S.Nos. SF.No.4/1, 4/3B, 5/2, 5/3A, 14/16A, 14/4, 14/17A, 10/2A, 10/2C, 59/3B, 59/3A, 59/2C, 59/2E, 58/2, 58/3, 58/4A, 58/4B, 58/4C, 68/3. But in the 'A' Register pertains to Sarkar Valapadi Village, it is otherwise and unless proper survey and demarcation is done, the water channel cannot be restored and taking advantage of the lapses on the part of the respondents, encroachments are cropping up and prays for appropriate orders.

- (6) Per contra, the learned Government Advocate appearing for the respondents 1 to 4 would submit that in the light of the dismissal of the earlier writ petition, there is no cause of action arose in favour of the petitioner and prays for dismissal of this writ petition.
- (7) This Court has considered the rival submissions and also perused the materials placed before it.
- (8) The petitioner, on an earlier occasion, in WP.No.1891/2016 raised the very same issue and taking note of the counter affidavit filed by the 4th respondent herein who has been arrayed as the 1st respondent therein, the Division Bench of this Court has dismissed the said writ petition on 08.02.2016. Though it is the vehement and forceful submission of the learned counsel for the petitioner, by drawing the attention of this Court to the FMB sketch as to the alleged existence of the water way, the 'A' Register pertains to the said Village do not disclose the said fact and that apart, the photographs filed in the typed set of documents would also disclose that there are wild growth of weeds and it appears that the said wild growth is in existence for very many years and if the petitioner is really interested, he would have taken appropriate steps to remove the same ; but he had not done so.
- (9) In the absence of any tenable materials to probablise and substantiate the claim of the petitioner made in this writ petition, this Court is unable to come to his aid.
- (10) In the result, the writ petition is dismissed.
- (11) The photographs made available in pages No.18 and 19 of the typed set of documents would disclose that there is a vast growth of exotic weeds and if it is on the Government land, the 2nd respondent is directed to take steps to remove the same. No costs.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

AP

To

1.The District Collector
District Collector Office
Salem.

2.The Tahsildar
Valapadi, Salem District.

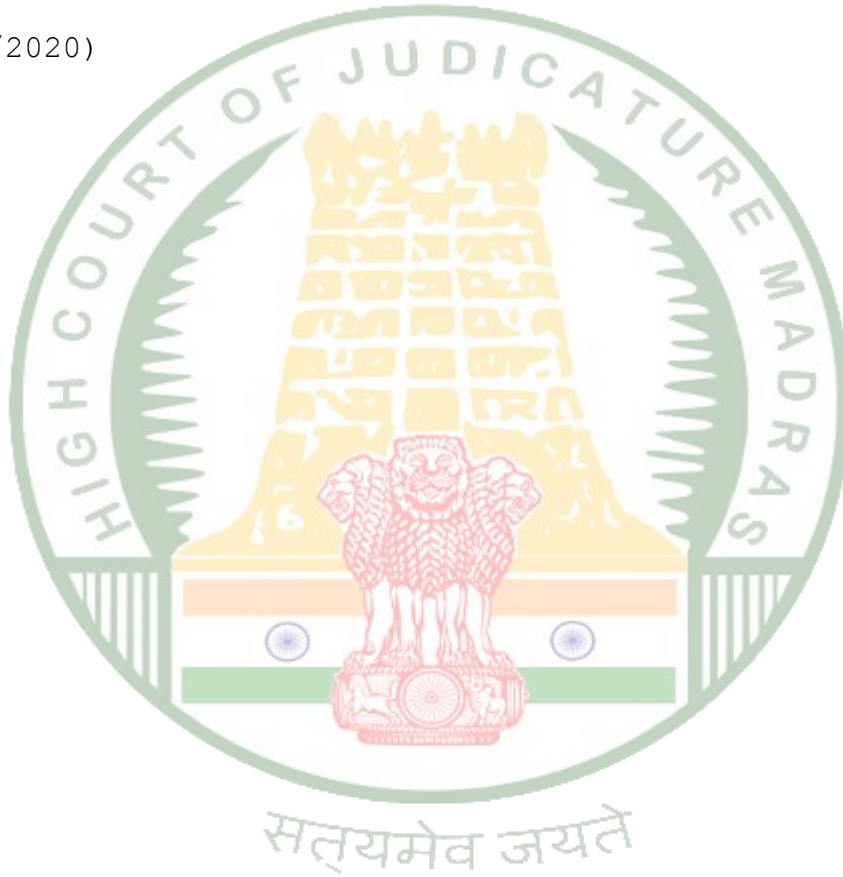
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3.The Taluk Surveyor
Valapady, Salem District.

4.The Executive Engineer
Public Works Department
Sarabanga Lift Irrigation Project
Namakkal.

WP.No.14817/2020

NR(CO)
RMP(27/11/2020)



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