

W.P.Nos. 15299 & 15463 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.11.2020

CORAM

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

W.P.Nos.15299 & 15463 of 2020

A.Gurusamy Petitioner in both WPs

Vs

1.The District Collector,
Office of the District Collector,
Erode - 638 001.

2.The Revenue Divisional Officer,
Office of the Revenue Divisional Officer,
South Road, Gobichettipalayam.

3.The Tahsildar,
Bhavani Taluk, Erode District.

4.The Commissioner,
Bhavani Municipality,
Bhavani Taluk, Erode District.

5.The Assistant Divisional Engineer,
Highways Department,
Bhavani Taluk, Erode District.

6.Maharaja

7.Dhamodharan

8.Jakkir Hussain

9.G.Gunaseelan

10.B.Suresh

11.P.Natarajan

... Respondents in both WPs

Prayer in W.P.No.15299 of 2020 :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the respondents 1 to 4 to consider the petitioner's representation dated 10.08.2020.

Prayer in W.P.No.15463 of 2020 :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the fourth respondent passed in Na Ka No.817/2020/F1 dated 21.07.2020 and quash the same and consequently direct the respondents 1 to 5 to safeguard the petitioner's easementary right to do weaving activities in the subject property without any external interruptions.

For Petitioners :Mr.A.V.Arumugham

For R1 to R5 :Mr.E.Balamurugane
Special Government Pleader

COMMON ORDER

The main issue that has been canvassed in both these writ petitions pertains to the alleged violation of the orders passed by this Court in Second Appeal No.340 of 2005 dated 10.02.2012. According to the petitioner, this Court while disposing of the Second Appeal in his favour, had categorically held that the petitioner is entitled to safeguard his easmentary right to do the weaving activities in the subject property. This right according to the petitioner has been violated by the official respondents, who are bound by the decree.

2. Heard Mr.A.V.Arumugam, learned counsel appearing for the petitioner and Mr.E.Balamurugane, learned Special Government Pleader appearing for the respondents 1 to 5.

3. A careful perusal of the records reveals the fact that the grievance that has been expressed by the petitioner requires factual consideration and appreciation of evidence. The fact as to whether the official respondents have violated the decree passed in favour of the petitioner by removing the fencing that was put up in the subject property requires taking evidence. This Court cannot undertake such an exercise in a writ petition. Therefore, it will be more appropriate for the petitioner to execute the decree passed in his favour before the concerned Civil Court. The decree cannot be attempted to be executed in a writ petition more particularly where it requires appreciation of facts.

4. In view of the above, this Court is not inclined to entertain both the writ petitions and it is left open to the petitioner to workout his remedy by filing an execution petition before the concerned Court and proceed further in accordance with law.

5. Both the writ petitions are disposed of, accordingly. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The District Collector,
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Erode - 638 001.

2.The Revenue Divisional Officer,
Office of the Revenue Divisional Officer,
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3.The Tahsildar,
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4.The Commissioner,
Bhavani Municipality,
Bhavani Taluk, Erode District.

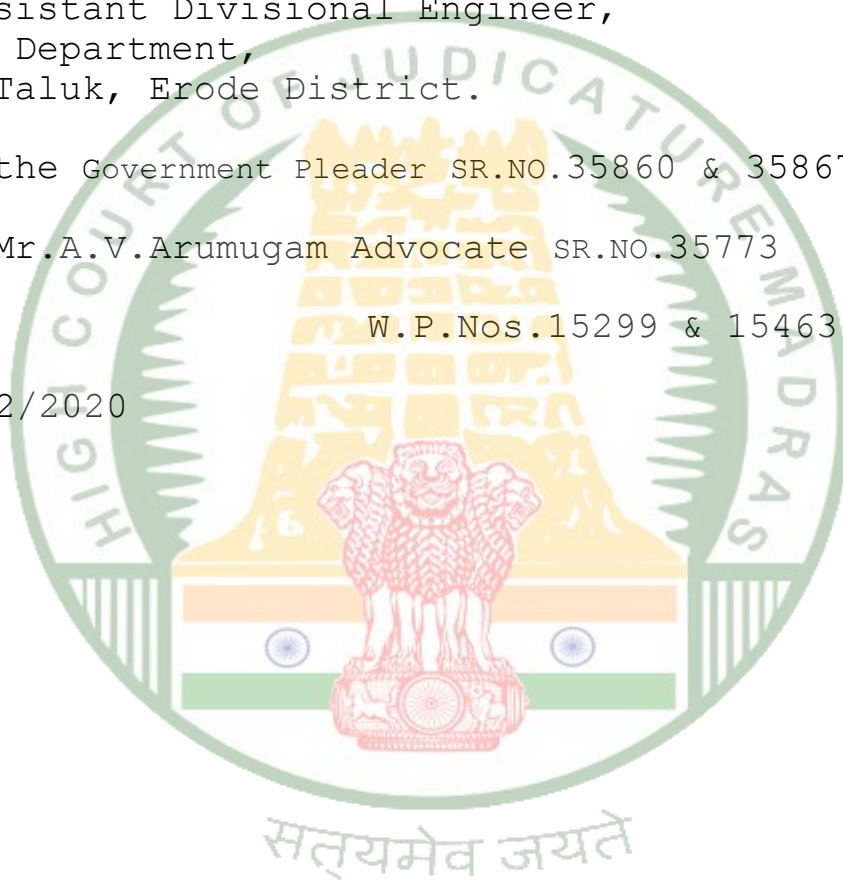
5.The Assistant Divisional Engineer,
Highways Department,
Bhavani Taluk, Erode District.

+2cc to the Government Pleader SR.NO.35860 & 35867

+1cc to Mr.A.V.Arumugam Advocate SR.NO.35773

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SDR 18/12/2020



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