

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2020

C O R A M

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.NO.42011 OF 2016

&

WMP.NO.35955 OF 2016

M.Subramaniam

... Petitioner

Vs.

1. The District Collector,
Coimbatore District,
Coimbatore.
2. The Revenue Divisional Officer,
Collectorate,
Coimbatore - 18.
3. The Tahsildar,
Sulur Taluk,
Coimbatore District.
4. The Executive Engineer,
Public Works Department,
Parambikulam - Azhiyar Basin Division,
Pollachi,
Coimbatore District.
5. The Assistant Executive Engineer,
PWD Azhiyar Basin Sub Division,
Palladam,
Coimbatore District.

6. Manthiriappa Gounder

...Respondents

PRAYER:

Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the respondents 1 to 5 to acquire the requisite extent of lands bearing S.F.Nos.232 and 233 of Kammalapatti Village, Sulur Taluk, Coimbatore District owned by the sixth respondent for the purpose of construction of field bothies to irrigate the petitioner's land bearing S.F.No.234 under the Ayacut of Parambikulam Azhiyar Project by giving effect to the order dated

28.06.2016 made in Na.Ka.No.17525/2015-U1 passed by the 1st respondent.

For Petitioner : Mr.N.Manokaran

For Respondents 1 to 5 : Mr.K.Ravikumar,
Additional Government Pleader

For Respondent 6 : Mr.S.Nagarajan

ORDER

The dispute involved in this writ petition is whether the petitioner is entitled to lay pipelines for his agricultural purposes in the sixth respondent lands bearing S.F.Nos.232 and 233 of Kammalapatti Village, Sulur Taluk, Coimbatore District as per the provisions of the Tamil Nadu Irrigation Works (Construction of Field Bothies) Act, 1959.

2. According to the petitioner, the petitioner as well as the sixth respondent are owners of lands coming under ayacut of the Parambikulam Aliyaru scheme under the Tamil Nadu Irrigation Works (Construction of Field Bothies) Act, 1959. According to the petitioner, as ayakattudar, the petitioner is entitled to form field bothies in S.F.Nos.232 and 233 which belongs to the sixth respondent for the purpose of irrigation in the petitioner's land bearing S.F.No.234. It is the case of the petitioner that the open channel for taking water through the sixth respondent land is not sufficient and the water does not go to the petitioner's land properly. According to him, hence he seeks construction of proper pipelines for bringing the water to the petitioner's land through the sixth respondent's land.

3. The learned counsel for the sixth respondent submitted that the sixth respondent filed a suit O.S.No.941 of 2017 before the District Munsif Court, Salem against the petitioner restraining him from enjoying the water channel which is the subject matter of dispute in this writ petition. Today, the learned counsel for the sixth respondent has produced the judgment and decree dated 19.01.2018 passed in O.S.No.941 of 2017 wherein the District Munsif Court has decreed the suit in favour of the sixth respondent

4. The third respondent Tahsildar has also filed an affidavit wherein in Paragraph 10, he has stated as follows:

"10. The Land in question was inspected by

me on 16.10.2019 and after a prolonged conciliation the 6th respondent consented to construct open Channel in his patta land, and the petitioner has accepted to it. Therefore, the question of acquisition does not arise. The petitioner also accepted to bear the expenses towards the formation of open channel in the 6th respondent's patta land."

5. It is also submitted by the learned counsel for the petitioner that aggrieved by the judgment and decree dated 19.01.2018, the petitioner has filed an appeal before the first appellate court which also confirmed the findings of the trial court and dismissed the appeal. As against the dismissal of the first appeal, the learned counsel for the petitioner submitted that the petitioner is likely to file a second appeal. It is his case that the suit itself which was filed by the sixth respondent is not maintainable in view of Section 8 of the Tamil Nadu Irrigation Works (Construction of Field Bothies) Act which bars filing of a suit. However, the same defence was raised by the petitioner in the suit which defence was rejected by the Trial Court as well as the First Appellate Court. This being the admitted position, this court is of the considered view that when disputed questions of facts are involved and the fact that the sixth respondent is having a judgment and decree in his favour against the petitioner involving the same subject matter, this court is not inclined to grant any relief to the petitioner at this stage. However, it is made clear that the petitioner if at all, he succeeds in the second appeal as and when it is filed and taken up for consideration, he is at liberty to approach this court for the same relief which he has sought for in this writ petition.

The learned counsel for the sixth respondent has submitted on instructions that the sixth respondent has no objection if the water is taken by the petitioner through sixth respondent's land in S.F.Nos.232 & 233 through open channel and not through pipelines which will affect the sixth respondent's usage of his land.

6. In view of the above, as on date there is no merit in this writ petition. Accordingly, this writ petition is dismissed. However, liberty is granted to the petitioner to approach this Court in case he succeeds in the proposed second appeal to be filed by him aggrieved by the judgment and decree passed by the lower appellate court as against the judgment and decree dated 19.01.2018 passed by the District Munsif Court

Salem in O.S.No.941 of 2019. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

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5. The Assistant Executive Engineer,
PWD Azhiyar Basin Sub Division,
Palladam,
Coimbatore District.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.2903
+1cc to Mr.S.Nagarajan, Advocate, S.R.No.2533
+1cc to the Government Pleader, S.R.No.3510

W.P.No.42011 of 2016

RSV(CO)
CS/18/02/2020