

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.34838 of 2019

K.Rajagopal

... Petitioner

Vs.

1.The District Collector,
Dharmapuri District.

2.The Block Development Officer,
Nallampalli,
Dharmapuri District.

3.The Tahsildar,
Nallampalli Taluk,
Dharmapuri District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, seeking Writ of Mandamus, directing the first respondent to close the new channel dugout in S.No.757/1, 757/3 of Adiyamankottai Village and compensate the petitioner for the loss suffered by him and restore the canal in S.No.689 of Adhiyamankottai Village based on the petitioner's representation dated 23.09.2019 and pass orders.

For Petitioner : Mr.M.Selvam

For Respondents : Mr.E.Balamurugan,
Special Government Pleader for R1 & R3
Mr.K.Bhuvaneswari,
Additional Government Pleader for R2

ORDER

This writ petition has been filed for the issue of writ of Mandamus directing the first respondent to close the new channel that has been put up in the property belonging to the petitioner.

2.The case of the petitioner is that the petitioner is the owner of the land in Survey Nos.757/1 and 757/3, wherein he is involved in cultivation in the said property. The land in Survey No.689 is situated bordering the property belonging to the petitioner. This is a water course for draining the excess water from the nearby lake. Due to non usage of the canal situated at Survey No.689, it is filled with debris. It is the further case of the petitioner that the petitioner gave a representation on 23.09.2019 to the respondents to close the new channel that has been illegally dugged in the property

belonging to the petitioner. Since it was not considered, the present writ petition has been filed before this Court seeking for appropriate directions.

3.The third respondent has filed a counter affidavit in this case. It has been mentioned in the counter affidavit that the Public Works Department Authority did not trespass into the property belonging to the petitioner in S.Nos.757/1 and 757/3 and no channel has been dug in this property. It has been further stated that the channel is situated only in the neighbouring land in S.No.689.

4.The learned counsel for the petitioner submitted that the channel has actually been laid in the property belonging to the petitioner. This has been denied by the respondents and their categorical case is that the channel has not laid in the property belonging to the petitioner and it was dug only in the adjoining property in S.No.689.

5.In view of the specific stand taken by the respondents, this Court exercising its jurisdiction under Article 226 of Constitution of India cannot enter into the realm of appreciation of evidence and find out where exactly the channel was dug. If the petitioner is so sure that the channel has been dug in his property, and the petitioner can approach the Competent Civil Court and workout his remedy. The Civil Court will be in a better footing to assess the fact as to where exactly the channel has been dug. Accordingly, the relief can also be granted to the parties.

6.In view of the above, this Court cannot pass any further orders and if the petitioner is aggrieved by the act of the respondents in digging the channel in the property belonging to the petitioner, eventhough, it is denied by the respondents, it is left open to the petitioner to workout his remedy before the Competent Civil Court.

7.This writ petition is disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

vkr
To

- 1.The District Collector, Dharmapuri District.
- 2.The Block Development Officer,
Nallampalli, Dharmapuri District.

3.The Tahsildar,
Nallampalli Taluk, Dharmapuri District.

4.The Government Pleader,
High Court, Madras.

W.P.No.34838 of 2019

A.SK(06/10/2020)



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