



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :17.09.2020

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

WEB COPY

W.P. (MD) No.4948 of 2020
and
W.M.P. (MD) No.4316 of 2020

K.Arumugam @ Thayalan

... Petitioner

Vs

1. The District Collector,
Madurai District, Madurai.
2. The Revenue Divisional Officer,
Madurai District, Madurai.
3. The Tahsildar,
Vadipatti Taluk,
Madurai District.
4. The Superintending Engineer,
PWD Department,
15B Mettupatti,
Vadipatty Taluk,
Madurai District.
5. The District Fire Officer,
Madurai District, Madurai.
6. The Station Fire Officer,
Alanganallur Fire Station,
Madurai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, forbearing the respondents herein from in any manner constructing the building for fire station in the property comprised in S.Nos.48/7 and 48/8 situated at Alanganallur Village, Vadipatti Taluk, Madurai District, on the basis of the proceedings issued by the Tahsildar in Na Ka.No.13/2015/E dated 14.01.2015.

For Petitioner	: Mr.K.P.Ramesh
For Respondents	: Mr.C.Ramesh Special Government Pleader
For Advocate Commissioner	: M/s.Hema Gayathri



ORDER

This Writ Petition is filed to forbear the respondents from constructing the building for fire station in the property in S.Nos.48/7 and 48/8 situated at Alanganallur Village, Vadipatti Taluk, Madurai District, based on the proceedings of the Tahsildar in Na Ka.No.13/2015/E dated 14.01.2015.

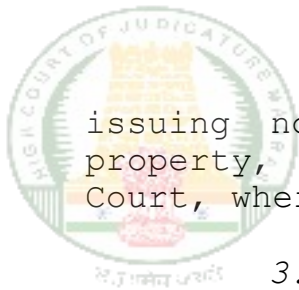
2. According to the petitioner, the property in S.Nos.48/6A and 48/6B belongs to him and at the backside of the aforesaid property, there is a water channel more fully comprised in S.Nos.48/7 and 48/8. The said water channel is the only water source for irrigating the petitioner's land and feeding the cattle and by using the same, the petitioner is also cultivating his land.

3. In such circumstances, the 2nd respondent, by his proceedings dated 14.01.2015, stated that the Government had decided to construct a Fire Service Station building, as a result of which, according to the petitioner, the aforesaid water channel would be closed and thus the farmers, who are cultivating the lands around the water channel area will be deprived of getting any water. After knowing the aforesaid fact, one Ashohan has filed a writ petition in W.P.(MD) No.7178 of 2018 before this Court for the very same prayer sought for in this petition, wherein, a Hon'ble Division Bench of this Court, by order dated 21.08.2018, had been stated as follows:-

"In view of the same, this writ petition is disposed of with the observation that the water channel which is in existence in S.No.48/8 shall not be disturbed as stated in the proceedings dated 14.01.2015. If the water channel runs through S.No.48/7 also the same cannot be disturbed, otherwise there is no impediment for putting up construction in survey No 48/7 and after making sure that the running water in the channel in survey No.48/8 is not disturbed. No costs. Consequently, the WMP (MD) No.6906 of 2018 is closed."

4. At this juncture, on 28.02.2020, the respondents 3 to 6 have all of a sudden piled up huge construction material in front of the water channel in S.Nos.48/7 and 48/8 to construct the Fire Service Station building by closing the water channel, which is violative of the order passed by this Court in W.P.(MD) No.7178 of 2018. Hence, the petitioner is before this Court for the relief stated supra.

5. In an earlier occasion, the learned counsel appearing for the petitioner raised a serious allegation as against the respondents that they have violated the earlier order passed by this Court in W.P.(MD) No.7178 of 2018 dated 21.08.2018. By taking note of the aforesaid allegation, this Court has appointed Ms.Hema Gayathri, as an Advocate Commissioner to inspect the property in S.No.48/7, after



issuing notice to the parties concerned. After inspecting the property, the Advocate Commissioner has filed a report before this Court, wherein, it has been stated as follows:-

3.It is humbly submitted that, as per the order of the Hon'ble High Court of Madurai Bench, I received the warrant of the Advocate Commissioner on 14.08.2020 and I visited the said property in Survey No.48/7 which is situated in Alanganallur on 05.09.2020 at 11.00 am., after giving notice to the petitioner and also to the respondents. The counsel for the petitioner, PWD officials, Revenue and Fire and Rescue Department officials were all present at that time. I measured the property with help of the surveyor in Survey No.48/7 within the following four boundaries measurement.

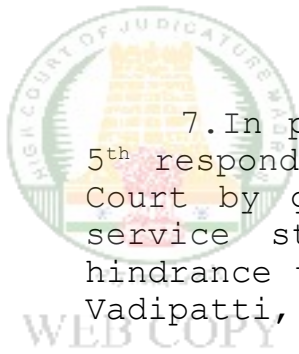
North - South : 24.8 mtr eastern side
South - North : 20.4 mtr western side
East - West : 67.8 mtr norther side
West - East : 63 mtr Southern side

From the North to South in the Survey No.48/8 there runs a main channel about 12 mtr wide. But it was in compressed water only constructed 2-3 feet of only of RR stones (Random Rubbed Stones) also called as filed pothy to increase the velocity of the water level. The water is distributed from Periyar main channel to Mettupatti.

4.It is humbly submitted that, in the S.No.48/8 Main Channel there is a division on which a portion of water runs through the Survey No.48/7, which passes through a small bridge and to a land comprised of S.No.6100 A. The said channel which runs through 48/7 almost runs around 63 metre with 3ft wide.

5.It is humbly submitted that, as per the instruction of the PWD the channel which runs in 48/7 exists for almost 60 years above. While coming to the instruction of the survey department as per the FMB it shows as water channel, but in A Register it is recorded as "Tharisu".

6.From the above, it is seen that as per the revenue records, the said water channel, which runs in S.No.48/7 has been in existence for the past 60 years and as per the FMB sketch, it is a water channel and in the 'A' Register, it has been recorded as "Tharisu".



7. In pursuance to the report of the Advocate Commissioner, the 5th respondent has filed an additional counter affidavit before this Court by giving an undertaking that they will construct the fire service station building as per the Government Orders without hindrance to the water channel in S.No.48/7 in Alanganallur Village, Vadipatti, Madurai District.

8. Taking note of the facts, regarding the submissions of the parties and considering the report of the Advocate Commissioner, wherein, the fifth respondent had specifically given an undertaking that they will construct the fire service station building as per the Government Orders without hindrance to the water channel in S.No.48/7 in Alanganallur Village, Vadipatti, Madurai District, the fifth respondent will strictly follow the undertaking affidavit filed before this Court.

9. Recording the said undertaking affidavit filed by the fifth respondent, the allegation of the petitioner is unsustainable and the same is liable to be rejected. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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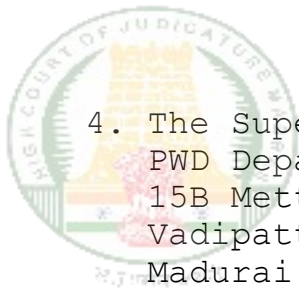
Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

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Madurai District,
Madurai.
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3. The Tahsildar,
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4. The Superintending Engineer,
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Madurai District.

+2 CC to Mr.K.P.RAMESH, Advocate SR-17241.

W.P. (MD) No.4948 of 2020
17.09.2020

SCR(CO)
CS(08.10.2020) 5P 9C