



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.09.2020

CORAM

THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

W.P. (MD) .No.8184 of 2020

and

W.M.P (MD) No.7604 of 2020

M.Masanam

... Petitioner

Vs.

1.The Assistant Director and Personal Assistant to Collector,
District Land Survey Office,
Sivagangai.

2.The Thasildar,
Taluk Office,
Ilayankudi,
Sivagangai District.

3.Jayaraman

... Respondents

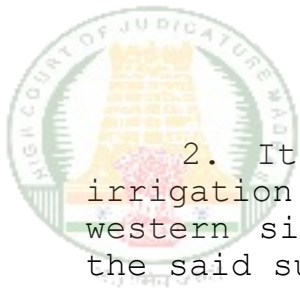
Prayer: The Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relates to the impugned order passed by the second respondent in proceedings in Na.Ka.A1-1359-2018, dated 18.03.2020 and quash the same as illegal, without jurisdiction and violative of principles of natural justice and consequently to direct the 1st and 2nd respondents to restore the FMB Sketch and revenue records as drawn in 2001 with respect to Channel situated in S.F.No.122/5A in Katchathanallur Village, Ilayankudi Taluk, Sivagangai District.

For Petitioner	:	Mr.S.Sankar
For R-1 & R-2	:	Mr.M.Muthugeethaiyan, Special Government Pleader
For R-3	:	Mr.B.Prahalad Ravi

O R D E R

(Order of the Court was made by **M. SATHYANARAYANAN, J.**)

It is the case of the petitioner that his grandmother namely Irulayee purchased a landed property comprised in S.F.No.122/5B and 122/1 at Kachathanallur Village, Ilayankudi Taluk, Sivagangai District, through a registered sale deed dated 09.08.1948 and adjacent to the said land, the land of the third respondent in S.F.No.122/5A is located.



2. It is the further case of the petitioner that the only irrigation source of his land is a Channel, which is situate on the western side of S.F.No.122/5A, which flows from South to North in the said survey number and it is in existence over 55 years.

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3. The petitioner would contend that initially the said Channel was included in the settlement survey FMB plan and during 'Updating Registry Scheme' (UDR Scheme), the said Channel was not included in the FMB plan mistakenly and the petitioner in this regard, submitted a representation to the Collector of Sivagangai District and on the basis of the instruction given by the said official, the second respondent conducted an enquiry on 24.05.2001 and passed an order, for inclusion of the said Channel in the revenue records. The petitioner alleging encroachment on the part of some private persons, filed O.S.No.23 of 2003 on the file of the Court of District Munsif, Ilaiyankudi, against third respondent as well as three others, praying for the relief of declaration as to the existence of the said waterway and permanent injunction restraining defendants from interfering with the right of having the waterway and enjoying the same.

4. The third respondent also filed O.S.No.25 of 2005 on the file of the Court of District Munsif, Ilaiyankudi against the Collector of Sivagangai District, Revenue Divisional Officer, Sivagangai and Revenue Tahsildar, Ilaiyankudi, as well as against the petitioner, who is arrayed as fourth defendant, praying for the relief of permanent injunction restraining the official respondents from putting up any waterway and consequently, retrain them from interfering with the peaceful possession and enjoyment of his land. Both the suits were taken up for trial together and common evidences were let in and the suit filed by the petitioner in O.S.No.23 of 2003, came to be decreed and the suit filed by the third respondent in O.S.No.25 of 2005, came to be dismissed vide common judgment and decree dated 27.04.2007.

5. It is the further case of the petitioner that the third respondent filed A.S.Nos.100 and 102 of 2007, challenging the said common judgment and decree and the first appellate Court namely, the Court of Subordinate Judge, Sivagangai, vide common judgment and decree, had dismissed both the appeals on 30.08.2010 and therefore, the said judgment and decree, has become final in the absence of any further challenge.

6. It is further contended by the petitioner that in the light of the petition filed by the writ petitioner for removal of encroachment, the second respondent passed an order on 08.06.2017 calling upon the third respondent to vacate from the land in question and it was put to challenge in W.P(MD)No.11337 of 2017 and the said writ petition came to be disposed of with certain



7. Accordingly, the petitioner submitted a detailed representation dated 29.11.2018 followed by a writ petition in W.P (MD)No.4992 of 2018, for removal of encroachment on the part of the third respondent and it was entertained and came to be disposed of on 08.03.2018, by directing the second respondent to conduct enquiry after affording opportunity to the third respondent and accordingly, the second respondent sent a notice to the third respondent on 03.05.2018 and the said notice was put to challenge in W.P(MD) No.10734 of 2018. This Court while disposing of the said writ petition on 09.05.2018, directed the third respondent to cooperate with the enquiry and thereafter, directed the second respondent to pass an order.

8. The first respondent has passed an order on 02.08.2018, directing the second respondent to restore the Channel in its old position and despite the fact that the petitioner is an interested person, no notice was served upon him.

9. Therefore, the petitioner filed W.P(MD)No.3632 of 2019, challenging the said order dated 02.08.2018 and it was disposed of on 21.10.2019 with further directions.

10. It is the case of the petitioner that the second respondent did not properly appreciated the facts and circumstances and had rejected the request of the petitioner vide the impugned order dated 18.03.2020 and challenging the legality of the same, the writ petition is filed.

11. The learned counsel appearing for the petitioner would submit that the communication of the first respondent addressed to the second respondent dated 02.08.2018, was the subject matter of challenge in W.P(MD)No.3632 of 2019 and he also filed W.P(MD) No.25414 of 2018 for police protection and this Court while disposing of the writ petition has erroneously recorded the fact that judgment and decree obtained by him in O.S.No.23 of 2003 cannot bind them as they are not parties to the said suit.

12. It is the submission of the learned counsel appearing for the petitioner by drawing the attention of this Court to the common judgment and decree dated 27.04.2007 in O.S.No.23 of 2003 and 25 of 2005 on the file of the Court of District Munsif, Ilaiyankudi, would submit that joint trial was conducted, common evidences were let in and common judgment and decree was given, wherein a positive finding has been given as to the existence of the said Channel and the challenge made by the third respondent in A.S.Nos.100 and 102 of 2007 also came to be rejected on 30.08.2010 and no further challenge has been made to the said judgment and decree and therefore, the communication sent by the first respondent to the second respondent dated 02.08.2018 is per se unsustainable and insofar as the impugned order is concerned, it is the submission of the learned counsel



appearing for the petitioner that since the said communication emanated from a superior official, the second respondent has left with no other option passed the order and hence, prays for interference.

13. This Court heard the submissions of Mr.M.Muthugeethaiyan, learned Special Government Pleader, who took notice on behalf of the respondents 1 and 2 and Mr.B.Prahalad Ravi, learned counsel appearing for the third respondent and he would submit that as rightly observed in the common order dated 21.10.2019 made in W.P (MD)No.25414 of 2018 and 3632 of 219, the second respondent has considered the relevant facts and circumstances and rightly arrived at a decision and since the dispute revolves around adjudication of disputed questions of fact, the present writ petition is not maintainable and prays for dismissal of the writ petition.

14. This Court has carefully considered the rival submissions made and also perused the materials placed before it.

15. A perusal of the common judgment dated 27.04.2007 in O.S.Nos.23 of 2003 and 25 of 2005 on the file of the Court of District Munsif, Ilaiyankudi, as well as the common judgment and decree dated 30.08.2010 in A.S.Nos.100 and 102 of 2007 on the file of the Court of Subordinate Judge, Sivagangai, would disclose that there is a positive finding with regard to the said Channel. Though in the suit O.S.No.23 of 2003 filed by the petitioner, the official respondents have not been arrayed as parties, the fact remains that the third respondent is arrayed as the first defendant and the third respondent has also filed O.S.No.25 of 2005 disputing the existence of the said Channel and both the suits were taken up together and joint trial was conducted and common evidences were let in and common judgment and decree came to be delivered.

16. As rightly pointed out, the challenge made by the third respondent to the said judgment and decree in A.S(MD)Nos.100 and 102 of 2007 on the file of the Court of Subordinate Judge, Sivagangai, also came to be dismissed on 30.08.2010 and therefore, the said judgments may have a bearing upon the merits of the case projected by the writ petitioner.

17. Admittedly, the second respondent is the subordinate to the first respondent and the reference No.2 of the impugned order is relating to the communication of the respondent dated 03.08.2018. The second respondent being the subordinate official of the first respondent is bound by the directions given in the communication of the first respondent dated 03.08.2018 sent to the second respondent and it appears that he merely obeyed the command of the first respondent.

<https://hcservices.courts.gov.in/hcservices/> light of the above facts and circumstances, this



Court is of the considered view that the impugned order dated 18.03.2020 passed by the second respondent warrants interference.

19. In the result, this writ petition is partly allowed and the impugned order of the second respondent dated 18.03.2020, is set aside and the matter is once again remanded to the second respondent. No Costs. Consequently, connected connected Miscellaneous Petition is closed.

20. It is open to the petitioner as well as the third respondent to submit additional representations with relevant and authenticated documents, within a period of four weeks from the date of receipt of a copy of this order and upon receipt of the same, the second respondent shall afford opportunity of personal hearing to the petitioner as well as the third respondent and thereafter, pass appropriate orders on merits and in accordance with law, within a further period of eight weeks thereafter. It is also made clear that the second respondent need not be influenced by the communication of the first respondent dated 03.08.2018 in Na.Ka.Aal/2288/2018 while deciding it afresh and communicate the decision taken, to the petitioner as well as the third respondent.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar(CS)

pm

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:

1.The Assistant Director and Personal Assistant to Collector,
District Land Survey Office,Sivagangai.

2.The Thasildar,
Taluk Office,Ilayankudi,Sivagangai District.

+1 CC to M/s.GP (SR-16767[F] dated 14/09/2020)

W.P(MD)No.8184 of 2020

11.09.2020

SJ(CO)

AP(22/09/2020) 5P 4C

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