



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **25.02.2020**

CORAM:

THE HONOURABLE MR. JUSTICE **T. RAJA**

and

THE HONOURABLE MR. JUSTICE **B. PUGALENDHI**

W.P. (MD) .NO.23368 of 2019

K.Bharathimohan

... Petitioner

Vs.

1.The State of Tamil Nadu,
rep. by its Chief Secretary,
Fort St. George,
Chennai-9.

2.The Director General of Police,
Office of Director General of Police,
Mylapore,
Chennai-4.

3.The District Collector,
District Collector Office,
Trichy
Trichy District.

4.The Superintendent of Police,
O/o. District Superintendent of Police,
Trichy,
Trichy District.

5.Mr.Muthukumar,
Inspector of Police,
Lalgudi Police Station,
Lalgudi
Trichy-01.

... Respondents

PRAYER : This writ petition has been filed under Article 226 of the Constitution of India, to issue a writ of mandamus, directing the respondents Nos.1, 2 and 4 to take disciplinary action against respondent No.5 for custodial torture made against the petitioner and by conducting proper departmental enquiry and consequently directing the respondents to grant compensation of Rs.5 lakhs to the petitioner within a time stipulated by this Court.

For Appellant

: Mr.Sethu Mahendran

For Respondents

: Mr.K.Dinesh Babu

Addl. Public Prosecutor for RR-1 to 4

Mr.P.Ganapathi Subramanian for R-5

Mr.R.Sundar, owner of the property

Mr.B.Saravanan, appointed as

Advocate Commissioner



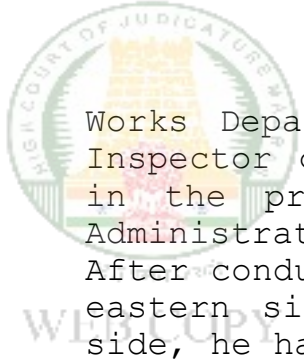
ORDER

(ORDER of the Court was made by **T.RAJA, J.**)

Mr.K.Bharathimohan has filed this writ petition, under Article 226 of the Constitution of India to issue a writ of mandamus, directing the respondents 1, 2 and 4 to take disciplinary action against respondent No.5 for custodial torture made against him, by conducting proper departmental enquiry and consequently direct the respondents to grant compensation of Rs.5 lakhs to the petitioner within a time frame fixed by this Court.

2.Learned counsel appearing for the petitioner claimed that the petitioner is a Social Activist, running a trust called Makkal Nala Arakkattalai, bearing Regn.No.BK IV/37/2016 in Lalgudi, for the past 3 years. Whileso, he has given a representation against the encroachers in Krishnapuram channel, Lalgudi, specifically mentioning that one Mrs.Saratha Unnikrishnan in collusion with the 5th respondent herein/Inspector of Police, Lalgudi Police Station, has made encroachments on the passage of the channel in survey Nos.110/6 and 109/8 which is going through Lalgudi - Paramasivapuram and when the said encroacher came to know that the petitioner and his Makkal Nala Arakkattalai were the reason for anti-encroachment action, in an effort to victimize the petitioner, she has approached the 5th respondent and the fifth respondent also by misusing his official power, tortured the petitioner under the police custody. Thereafter also, he has given a representation on 08.08.2019 at 6.00 p.m. On 08.08.2019 at about 6.00 p.m, the fifth respondent also sent a Police Constable to the petitioner's Office and the said Constable instructed the petitioner to go to the Police Station immediately without fail. In response, the petitioner approached the Police. The fifth respondent asked him to remain there and started abusing him and humiliated him and questioned the petitioner why he should be doing all such social works. The fifth respondent also asked him to abstain from all his social activities particularly Krishnapuram channel. Thus, the fifth respondent unnecessarily detained the petitioner at the Police Station till 08.00 p.m, on the next day i.e on 09.08.2019. That clearly shows that he has misused his official powers and this is a gross violation of mandatory conditions prescribed by the Honourable Apex Court as well as this Court.

3.When the learned counsel appearing for the petitioner argued before us that when the petitioner has been running a trust called Makkal Nala Arakkattalai and has been making representations for removal of encroachments in Krishnapuram channel, Lalgudi, we also thought fit to appoint Mr.B.Saravanan, who is one among the members of the Committee, constituted by this Court, helping this Court to restore the water bodies. Mr.B.Saravanan, on being asked to make an immediate spot inspection, carried out the survey, in the presence of the petitioner, fourth respondent, Mrs.Shanmugasundari-Tahsildhar, Lalgudi, Mr.O.P.Krishnan, Assistant Engineer, Public



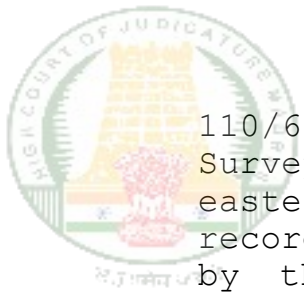
Works Department, Lalgudi, Inspector of Police, Samayapuram, Sub-Inspector of Police, assisted by Mr.Xavier Franklin (TDS) that too in the presence of Revenue Inspector, Lalgudi and the Village Administrative Officer, L.Abishekapuram and Village Assistant. After conducting a detailed survey from the western direction to the eastern side to identify the bund of the channel on the western side, he has mentioned in his report dated, 24.02.2020, filed before us that no encroachment has been caused in the channel. Relevant portion of his report is also extracted hereunder:

"4.It is respectfully submitted that accordingly, the survey of the disputed site commenced at about 11.00 AM on 22.02.2020 in the presence of Mrs.Shanmugasundari, Tahsildhar, Lalgudi, O.P.Krishnan, Assistant Engineer, Public Works Department, Lalgudi, Inspector of Police, Samayapuram, Sub-Inspector of Police. The survey was carried out by Mr.M.V.Sakthikumar, assisted by Mr.Xavier Franklin (TDS) in the presence of Revenue Inspector, Lalgudi, Village Administrative Officer, L.Abishekapuram and Village Assistant.

5.It is respectfully submitted that the revenue records namely FMB and 'A; Register of the year 1987 were produced to survey the disputed land in Survey No.109/9 & 110/6. The land owned by Mrs.Saratha Unnikrishnan is located on the eastern side of the channel and secured by compound wall on all four sides. The surveyor identified a reference stone located on the Northern side of the disputed site and in the presence of all mentioned above, survey was commenced. The land which is owned by the said Mrs.Saratha Unnikrishnan was also surveyed by relying upon the FMB sketch from the reference point and the survey clearly indicated that the compound walls have been erected within the boundary and no encroachment could be found on all four sides.

6. It is respectfully submitted that to ensure as to whether the channel is free from encroachment, it was decided to conduct survey from the road which is located about 46.6 meters away from the western boundary of the channel. A reference point identified by the surveyor and survey was conducted from the western direction to eastern direction to identify the bund of the channel on the western side. After identifying the western bund, once again the width of the channel was measured and I found that no encroachment has been caused in the channel.

7. It is respectfully submitted that the channel which runs North-South direction in Survey No.109/8 &



110/6 takes a deviation towards eastern direction in Survey No.110/6. The stretch of the channel on the eastern side was also surveyed as per the revenue records and I am unable to find any encroachment caused by the aforementioned person. The wall has been constructed on the bund of the channel within the private land. The compound wall has been raised in such a manner that it will collapse in case of desilting of the channel in issue."

4.After a copy of the report is furnished to both parties, Mr.Sethu Mahendran, learned counsel appearing for the petitioner also submitted that as on today, there is no encroachment, but when the representation was given on 08.08.2019 for removal of encroachment, there was encroachment. But we concern with the removal of encroachments obstructing the water supply channel.

5.Since Mr.B.Saravanan, learned Advocate Commissioner, appointed by us, after undertaking a personal inspection, in the presence of Mrs.Shanmugasundari, Tahsildhar, Lalgudi, Mr.O.P.Krishnan, Assistant Engineer, Public Works Department, Lalgudi, Inspector of Police, Samayapuram, Sub-Inspector of Police, has conducted a detailed survey, as mentioned in paragraph Nos.6 and 7 of the report and finally found that there is no encroachment caused by the aforementioned person and he has also further mentioned that wall has been constructed on the bund of the channel within the private land.

6.In view of the above developments, we are unable to entertain the prayer made in this writ petition. Therefore, the writ petition fails.

7.In the result, the writ petition is dismissed. The parties are directed to pay Rs.45,000/- (Rupees forty five thousand only) to the learned Advocate Commissioner, out of which, the petitioner is directed to pay Rs.10,000/- (Rupees ten thousand only); the fifth respondent is directed to pay Rs.10,000/- (Rupees ten thousand only); and Mrs.Saratha Unnikrishan/owner of the property is directed to pay Rs.25,000/- (Rupees twenty five thousand only) to the learned Advocate Commissioner. No costs.

Sd/-

Assistant Registrar (co)

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/ /2020

Sub Assistant Registrar(CS)



To

1. The Chief Secretary,
State of Tamil Nadu,
Fort St. George,
Chennai-9.

2. The Director General of Police,
Office of Director General of Police,
Mylapore,
Chennai-4.

3. The District Collector,
District Collector Office,
Trichy
Trichy District.

4. The Superintendent of Police,
O/o. District Superintendent of Police,
Trichy,
Trichy District.

5. The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.

6. B. Saravanan, Advocate Commissioner.

+1 CC to Mr. S. SUNDAR, Advocate (SR-8283[F] dated 26/02/2020)

W.P. (MD) .N.23368 of 2019
25.02.2020

VB(17.03.2020) 5P 8C