

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 05.01.2021
CORAM
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
C.M.A.No.1051 of 2011

1.Sarada
2.Sankar
3.Kesavan

..Appellants

Vs.

1.Tamil Nadu Government
Rep.by the District Collector,
Nagapattinam.

2.The Special Tahsildar (L.A)
Road Sector Project,
Nagapattinam.

3.Tahsildar,
Nagapattinam.

..Respondents

Prayer : Civil Miscellaneous Appeal filed under Order 43 Rule 1 of C.P.C., against the Fair and Decretal order dated 30.09.2010 made in I.A.No.66 of 2020 in CMA.No.9 of 2010 on the file of the Subordiante Judge, Nagapattinam.

For Appellants : Mr.T.S.Baskaran

For Respondents : Mr.S.Jaganathan
Government Advocate (CS)

J U D G M E N T

The Fair and Decretal order dated 30.09.2010 made in I.A.No.66 of 2020 in CMA.No.9 of 2010 sought to be set aside in the present Civil Miscellaneous Appeal.

2. The Interlocutory Application is filed to commit the respondents to Civil prison for the contempt caused by them and to make them obey the order passed in I.A.No.2 of 2010, renumbered as I.A.No.64 of 2010 before the Sub Court, Nagapattinam.

3. The interim order granted was the cause for filing the Interlocutory Application to commit the respondents to Civil Prison for contempt. The Sub Court, Nagapattinam, elaborately considered the issues raised by the respective parties and appointed an Advocate Commissioner to find out whether the order passed by the Court was or not. The Commissioner appointed by the Court visited the suit property and submitted his report and plans Exs.C1 and C2 and has stated that during

his inspection on 11.06.2010, which was a second inspection some trees were also newly cut and pits were newly dug after his first inspection and so itself shows that no waste was committed by the respondents. Further, only cutting of trees or digging pits and demolishing an existing building amounts to act of waste and new construction would only amount to a development and it could not be termed as act of waste and therefore, the Court determines that even if the respondents have proceeded with construction after passing an order in I.A.No.2 of 2010, it would not amount to act of waste over the suit property sought to be prevented by the petitioners since as stated above construction is only a development activity and accordingly, the Court arrived a conclusion that the respondents have not violated the orders passed by the Sub Court in I.A.No.2 of 2010.

4. In view of the fact that based on the report of the Commissioner appointed by the Court, the Trial Court arrived a conclusion that the respondents have not committed an act of contempt of the order passed by the Trial Court. This being the factum, this Court do not find any acceptable ground for the purpose of interfering with the order passed by the Sub Court, Nagapattinam as the reasons stated are candid and convincing. Thus, the parties have to adjudicate the issues on merits in the suit filed.

5. Accordingly, the Fair and Decreetal order dated 30.09.2010 passed in I.A.No.66 of 2010 in C.M.A.No.9 of 2010 stands confirmed and C.M.A.No.1051 of 2011 stands dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Subordinate Court,
Nagapattinam.

2.The District Collector,Tamil Nadu Government
Nagapattinam.

3.The Special Tahsildar (L.A)
Road Sector Project,
Nagapattinam.

4.Tahsildar,
Nagapattinam.

+lcc to Mr.T.S.Baskaran, Advocate SR.No. 400

C.M.A.No.1051 of 2011

A.SK(23.03.2021)

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