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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.11884 of 2013
and
M.P.Nos.2 & 3 of 2013

M.Shanmugavadivu

...Petitioner

Vs

- 1.The Executive Engineer,
Public Works Department,
Bhavanisagar Dam Division,
Water Resources Organisation,
Bhavanisagar - 638 451,
Erode District.
- 2.The Assistant Executive Engineer,
Public Works Department,
Irrigation Sub Division,
Coimbatore - 1.
- 3.The District Collector,
Collectorate Building,
Coimbatore - 18.
- 4.The Revenue Divisional Officer,
Collectorate Building,
Coimbatore - 18.
- 5.Dr.L.P.Thangavel

... Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned orders made in Lr.No.Va.Pa/Ie.Va.A3/ Ko73/64M/2013 dated 12.02.2013 passed by the 1st respondent and the order made in Na.Ka.No.17742/2012/A3 dated 25.02.2013 passed by the 3rd respondent quash the same.



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For Petitioner : Mr.N.Manokaran

For Respondents : Mr.K.M.D.Muhilan
Government Advocate
[For R1 to R4]

Mr.M.Sriram
[For R5]

O R D E R

The order impugned dated 12.02.2013 passed by the first respondent and the order dated 25.02.2013 passed by the third respondent are under challenge in the present writ petition.

2. The petitioner states that there is a civil dispute between the petitioner and the 5th respondent. The petitioner has filed a suit in O.S.No.770 of 2008 on the file of the Additional District Court, Coimbatore for partition of the suit properties into two equal shares and for allotment of one such share and for the consequential relief of permanent injunction, restraining the defendants from alienating or creating any encumbrances over the suit properties.

3. The suit was decreed and the preliminary decree was passed. The appeal suit was filed and the said appeal suit is pending for adjudication. Under these circumstances, the 5th respondent submitted an application for construction of a over bridge to cross the River, so as to reach his property. The permission was initially granted and it was cancelled due to the objections raised by the petitioner and thereafter, once again, it was considered and the permission was granted.

4. The learned counsel for the petitioner reiterated that the manner in which, the application submitted by the 5th respondent was considered by the authorities is unusual and within three days, they have granted such a permission in a hurried manner for constructing a over bridge to cross the River at the cost of the 5th respondent. It is contended that no opportunity of hearing was provided to the petitioner. In view of the fact that the Civil Suit is pending, the petitioner is entitled for an opportunity. Thus, the entire exercise and the order impugned passed is in violation of the principles of natural justice. When the Civil Suit is pending between the parties and the preliminary decree was passed and against the preliminary decree, the appeal suit is filed and pending, the authorities ought not to have entertained the application filed by the 5th respondent.



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5. The learned counsel appearing on behalf of the 5th respondent made a submission that the proposed construction of over bridge is not falling within the disputed property, which is the subject matter of the suit and the appeal suit and therefore, the petitioner is no way connected with the permission and opportunity of hearing in such circumstances would not arise at all.

6. The learned counsel for the 5th respondent states that the permission was granted by imposing 10 conditions. As per the conditions, the entire expenditure should be met out by the 5th respondent and the bridge must be put in use for the public at large and the bridge belongs to the PWD Department and the 5th respondent cannot claim any ownership in respect of the bridge proposed to be constructed at the cost of the 5th respondent. At the outset, it is contended that permission was granted in the public interest and the 5th respondent cannot claim any ownership in respect of the construction of a over bridge on the River.

7. The learned Government Advocate appearing on behalf of the respondents R1 to R4, relying on the counter affidavit filed by the first respondents, made a submission that the respondents 1 to 4 are the Government officers and much concerned about the larger public. The construction of bridge across the Kunutipathy river in Government land will not affect the property of Tmt.M.Shanmugavadivu. The first respondent has clearly stated that the proposed bridge is going to be constructed in the Government land and not in the disputed land. Further, it is contended that permission given by the Government for construction of bridge across any water bodies for agricultural purposes will be used by any public and the bridge is the property of the PWD after construction. The respondents 1 to 4 are not in any way connected with the private patta land holders property.

8. It is unambiguously clarified by the respondents that the proposed bridge across the River is going to be constructed at the cost of the 5th respondent in the Government land. 10 Conditions are imposed. The proposed bridge is for the public interest and for the common usage of the public at large. It is further clarified that after construction, the bridge belongs to the PWD Department and the 5th respondent cannot claim any right over the bridge going to be constructed at the cost of the 5th respondent.

9. This being the nature of conditions imposed for grant of permission, this Court is of an opinion that the rights of the petitioners are not violated. Further, the proposed bridge is not going to be constructed in respect of the disputed land, which all are the subject matter of the civil proceedings now pending between the petitioner and the 5th respondent. Under



these circumstances, the petitioner is to be construed as an alien to the consideration deliberated by the competent authorities and thus, there is no opportunity needs to be given by the authorities as the rights of the petitioner has not been infringed.

10. In view of the facts and circumstances, the petitioner is not entitled for any relief. If any other grievance exists for the petitioner, it is for her to approach the competent authorities.

11. With these observations, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-VI)

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Sub Assistant Registrar

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To

1.The Executive Engineer,
Public Works Department,
Bhavanisagar Dam Division,
Water Resources Organisation,
Bhavanisagar - 638 451, Erode District.

2.The Assistant Executive Engineer,
Public Works Department,
Irrigation Sub Division,
Coimbatore - 1.

3.The District Collector,
Collectorate Building,
Coimbatore - 18.

4.The Revenue Divisional Officer,
Collectorate Building,
Coimbatore - 18.

+1CC to M/s.N.Manokaran, Advocate, SR.No. 53116

+1CC to M/s.M.Sriram, Advocate, SR.No. 52986

+1CC to The Government Pleader, SR.No. 53241

W.P.No.11884 of 2013

SPD(CO)

B.VC (27/10/2021)