

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.03.2021

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

W.P.No.7683 of 2021

C.Durairaj

..Petitioner

Versus

The Assistant Divisional Engineer,
Highways Department,
(Construction and Maintenance)
Erode-2, Erode District.

..Respondent

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the notice dated 14.12.2020 in KA.No.17/2020/enu on the file of the respondent and quash the same and pass such further order or other orders as this Court deems fit.

For Petitioner :Mr.N.Chinnaraj

For Respondent :Mr.M.Loganathan

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

The petitioner in his capacity as family manager has filed a Suit in O.S.No.52 of 1999, on the file of the 1st Additional District Munsif, Erode, praying for permanent injunction and the Suit, after contest, came to be dismissed, vide judgment and decree dated 20.03.2001.

2. The petitioner in the said capacity filed an appeal in A.S.No.60 of 2002, challenging the said judgement and decree and the Court of Principal District Judge, Erode, vide judgment and decree dated 27.09.2002, has partly allowed the said Appeal and granted permanent injunction only in respect of patta land of the petitioner herein / appellant in R.S.No.130/2 and 3 of Punjai Kalamangalam Village, Erode Taluk.

3. The petitioner and another person, namely, Mr.P.Ganapathy were issued with notices by the 1st respondent herein for removal of encroachment and both of them made a challenge to the same, by filing W.P.Nos.37710 and 37711 of 2003, praying for quashment of the said notices. The learned Judge, vide order dated 07.10.2015, after taking note of the judgement and decree passed in A.S.No.60 of 2002, by the Court of Principal District Judge, has dismissed the Writ Petition.

4. The petitioner, once again filed O.S.No.621 of 2015, on the file of the Court of Principal District Munsif at Erode, praying for mandatory injunction to cause survey and measure the land in R.S.NO.131 and 612, which is said to have lie between R.S.No.130/2 and 3 and consequential permanent injunction.

5. The Trial Court, vide judgement and decree dated 29.07.2019, has dismissed the Suit and challenging the same, the petitioner has filed A.S.No.52 of 2019, on the file of the Sub Court, Erode and the said appeal was also dismissed, vide judgement dated 03.08.2020 and challenging the same, S.A.No.85 of 2021 has been filed and the same is said to be pending on the file of this Court.

6. The primordial submission made by the learned counsel appearing for the petitioner is that before causing removal of encroachment in R.S.Nos.131, 287, 607 and 612 of Punjai Kalamangalam Villlage, Erode Taluk, survey and fixation of boundary ought to have been done and without doing so, the 1st respondent has proceeded further in terms of the impugned order and prays for appropriate orders.

7. Mr.M.Loganathan, learned Additional Government Pleader appearing for the respondent would submit that in the light of the findings given by the Civil Court in A.S.No.60 of 2002 as well as in O.S.No.621 of 2015, this Court has dismissed the earlier Writ Petition filed by the petitioner in W.P.No.37710 and 37711 of 2003 and the Writ Petitioner has no case at all and it is only an abuse of process of this Court and prays for dismissal of this Writ Petition with exemplary costs.

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

9. The Court of Principal District Judge, vide judgment and decree dated 27.09.2002, made in A.S.No.60 of 2002, given a categorical finding that the petitioner being a family manager, is entitled for permanent injunction only with regard to his patta land, in respect of R.S.No.130/2 and 3 of Punjai

Kalamangalam Village, Erode Taluk and no appeal has been filed, challenging the said judgement and it has become final.

10. The 1st respondent has issued notices dated 15.12.2003 to the petitioner as well as to one Mr.P.Ganapathy, for removal of encroachment and both of them made a challenge to the same by filing W.P.Nos.37710 and 37711 of 2003 and those Writ Petitions also came to be dismissed on 07.10.2015 and no further challenge has been made to the said order also. It is also to be noted at this juncture that the petitioner had filed O.S.No.621 of 2015, praying for mandatory injunction to survey and measure the land in R.S.NO.131 and 612, which is said to have lie between R.S.No.130/2 and 3 and also for consequential permanent injunction, restraining the official respondents herein as well as the Collector of Erode District, from interfering with his possession and the Suit after contest, came to be dismissed on 29.07.2019 and so also the Appeal in A.S.No.52 of 2019. Though it is submitted by the learned counsel appearing for the petitioner that S.A.No.85 of 2021 is pending on the file of this Court, the present status of the same has not been disclosed and it is also not made clear from the affidavit filed in support of this Writ Petition as to the subsistence of any interim order.

11. As rightly pointed out by the learned Additional Government Pleader appearing for the respondent, the petitioner is abusing the process of this Court, despite the findings given by the Civil Court in the above said legal proceedings.

12. In the considered opinion of this Court, except the certain extent of land in R.S.No.130/2 and 3 of Punjai Kalamangalam Village, Erode Taluk, pursuant to the judgement and decree dated 27.09.2002 in A.S.No.60 of 2002, the petitioner has no semblance of right over the lands which are the subject matter of the impugned notice and this Court finds no merits in this Writ Petition.

13. In the result, the Writ Petition is dismissed. No costs. Consequently connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

sk

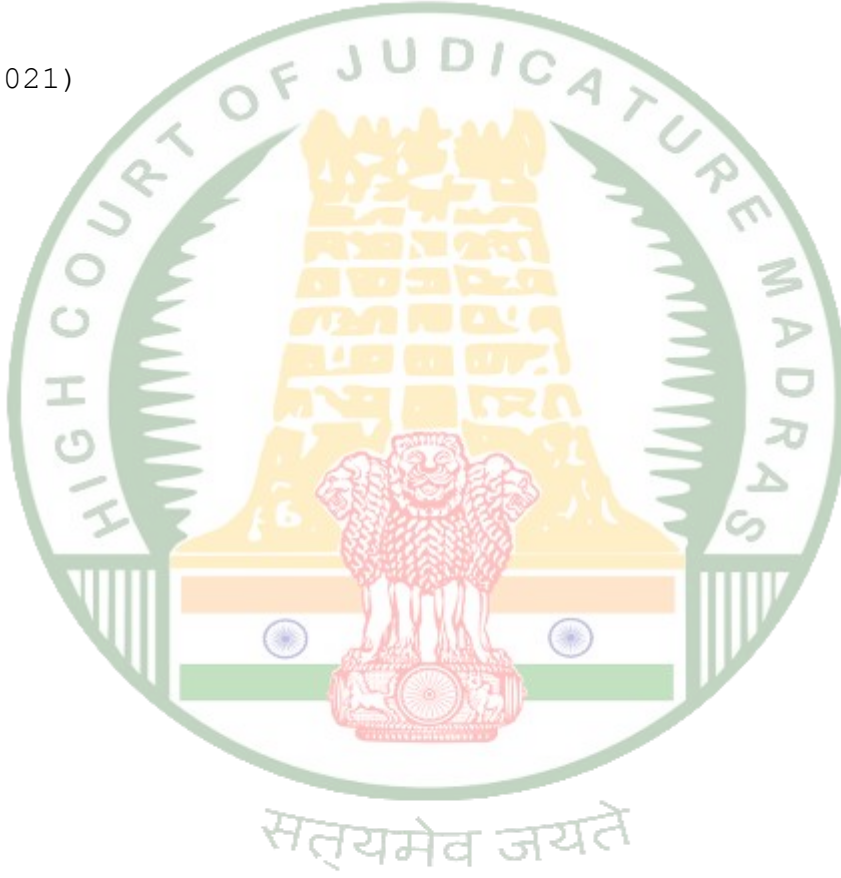
To

The Assistant Divisional Engineer,
Highways Department,
(Construction and Maintenance)
Erode-2, Erode District.

+1 CC to The Government Pleader sr 19920.

W.P.No.7683 of 2021

GPL (CO)
SP(20/05/2021)



WEB COPY