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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.08.2021

CORAM:

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.19603 of 2020

P.Ashraf

.. Petitioner

Vs

1. The Cherangode Village Panchayat,
Rep. by its President, Cherambadi,
The Nilgiris 643 205

2. Tahsildar
Pandalur, The Nilgiris.

3. The Revenue Divisional officer,
Gudalur, The Nilgiris

4. Beeran

5. Saidhalavi

6. Subaidha
(Respondents 4 to 6 impleaded vide order dated
16.08.2021 by NAVJ in WMP No.841 of 2021
in WP No.19603 of 2020]

... Respondents

Prayer : Writ petition filed under Article 226 of the
Constitution of India praying for issuance of a writ of Mandamus
to direct the Respondents herein to consider the petitioner
representation dated 19.11.2020.

For Petitioner	: Mr.P.Anbarasan
For Respondents	: Mr.A.Selvendran, Government Advocate for for R1 to R3. Mr.Duraikkan S Philip for R4 to R6



O R D E R

This writ petition has been filed for the issue of writ of Mandamus directing the official respondents to consider the representation made by the petitioner on 19.11.2020, wherein the petitioner has requested for the demolition of the compound wall put up by the respondents 4 to 6, in the property to ensure the natural flow of the water.

2. The case of the petitioner is that the respondents 4 to 6, who are having their property nearby are obstructing the natural flow of a stream by constructing a wall and as a result of the same, there is stagnation of sewage water in the property belonging to the petitioner during the rainy season and the contamination of the water in the well belonging to the petitioner.

3. The petitioner made a representation in this regard to the respondents to remove the obstruction by demolishing the compound wall and ensure the free flow of the stream. Since the same was not considered by the respondents, the present writ petition has been filed before this Court seeking for appropriate directions.

4. During the pendency of this writ petition, this Court had appointed an Advocate Commissioner to make an inspection of the property and to submit a report. Accordingly, the learned Advocate Commissioner has filed a report dated 15.07.2021, along with the relevant photographs and rough sketch.

5. The learned Advocate Commissioner on inspecting the property has found that there was no stream traceable in the site at the time of inspection. However, the learned Advocate Commissioner refers to the availability of a culvert, which is said to be built by the highways department in SF No.1353/3. It is stated in the report that during rainy season, the water will run through the culvert and from there it moves towards the land in S.F.No.1353/3 and will reach the property belonging to the 6th respondent in S.F No.1353/2A-1. The learned Advocate Commissioner also noticed the fact that there was a compound wall measuring 4 feet height with 1/2 feet thickness which was constructed in the property belonging to the 6th respondent. The property of the 6th respondent is situated in between the property belonging to the petitioner and the property belonging to the respondents 4 and 5.

6. The respondents 4 to 6 have also filed their objections for the Advocate Commissioner report and they have taken a specific stand that the property admittedly belongs to the



respondents and there is no stream as alleged by the petitioner and there is no obstruction made to the flow of the stream by constructing a compound wall. The private respondents have taken a stand that the property admittedly belongs to them and therefore, there is no right for any one to get into the property and demolish the compound wall.

7. The learned Government counsel appearing on behalf of the respondents 1 to 3 circulated the written instructions dated 12.04.2021 given by the 2nd respondent. A careful reading of the written instructions given by the 2nd respondent shows that there is no permanent stream or water body as alleged by the petitioner. It is only during the rainy season, the water flows down and passes through S.F.No.1353/3 and reaches the back portion of the property belonging to the 6th respondent in S.F.No.1353/2A-1. It is further stated by the 2nd respondent that the properties in question are private patta lands and these are not government lands and therefore, there is no scope for the official respondents to interfere with the possession and enjoyment of the land belonging to the petitioner and the respondents 4 to 6.

8. The learned counsel for the petitioner submitted that an attempt is being made by respondents to project this case as if a private dispute is being agitated in this writ petition between the petitioner and the respondents 4 to 6. The learned counsel submitted that there is no claim over any property and what is focussed in the present writ petition is only the fact that the 6th respondent is putting up a compound wall in his property and thereby, is virtually stopping the natural flow of a stream and as a result of the same, there is water stagnation during rainy season and it pollutes the water in the well belonging to the petitioner. Therefore, the learned counsel submitted that the authorities must ensure that the compound wall is removed and the free flow of the stream is ensured.

9. Heard the learned counsel appearing for the petitioner and Mr.A.Selvendran, Government Advocate for respondents 1 to 3 and Mr.Duraikkan S Philip, learned counsel for respondents 4 to 6.

10. This Court has carefully considered the submissions made on either side and also the materials available on record.

11. The scope of this writ petition is in a very narrow campus. This Court is not concerned about a private dispute between the petitioner on the one hand and respondents 4 to 6 on the other. The only grievance expressed by the petitioner is that there is a stream of water that has a natural course which



flows down into the forest and the 6th respondent by constructing a compound wall in the property is stopping the free flow of water. This in turn is causing stagnation of water in the property belonging to the petitioner.

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12. The Nilgiris is a hill station and in terms of its landscape, it has its own peculiarities. During rainy season, the water has to go down the hills to the forest and therefore, it goes through private property of many persons, who own property in Nilgiris. This is not a case where there is a stream or a water body available and the flow of this stream is being stopped by the 6th respondent. In the present case, the dispute seems to be arising only during the rainy season when the water flows down to the forest. The grievance of the petitioner is that the water passes through the culvert and reaches the property belonging to the 6th respondent and due to the construction of a compound wall in the property belonging to the 6th respondent, the water is not able to go down in its natural flow. This is a dispute which can never be sorted out in a writ petition. It is clear that there is a private dispute between the petitioner and the respondents 4 to 6. The dispute is now attempted to be projected as if the private respondents are preventing the natural flow of a stream. There is no such stream that is available in the property and it is also very clear from the report of the Advocate Commissioner. If the private respondents are preventing the flow of the water and thereby causing inundation of water in the property belonging to the petitioner, it is a dispute that has to be resolved only before the competent civil Court. The authorities cannot get into private properties and start demolishing compound walls and such a right is not traceable to any law. If the private respondents had constructed any wall in a Government land, then it is understandable that such a wall has to be demolished. In the present case, even as per the stand taken by the official respondents, the property in question is a private property and the compound wall has been put up in the private property and therefore, it cannot be demolished by the authorities. Such demolition will directly interfere with the constitutional right guaranteed to the citizens under Article 300 A of the Constitution of India. Therefore, the relief as sought for by the petitioner before this Court is not sustainable.

13. If the petitioner feels that he has an easement right or any other civil right to safeguard his property and the action of the private respondents is interfering with the same, the petitioner has to necessarily go before the Civil Court and establish his right. The petitioner has chosen a wrong forum and the issue that has been projected before this Court is not justiciable under Article 226 of the Constitution of India. The



matter involves disputed questions of fact. Except giving this liberty, no further orders can be passed in this writ petition.

14. This writ petition is disposed of accordingly. No costs.

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Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The President,
The Cherangode Village Panchayat,
Cherambadi,
The Nilgiris 643 205

2. The Tahsildar
Pandalur, The Nilgiris.

3. The Revenue Divisional officer,
Gudalur, The Nilgiris

+1CC to Mr.P.Anbarasan, Advocate, Sr.No.41004

+2CCs to Mr.Duraikkan S.Phillip, Sr.No.40982

+1CC to the Government Pleader, Sr.No.41512

W.P.No.19603 of 2020

CA (CO)

K.RK. (05.10.2021)