



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Order	Date of Pronouncing the Order
14.07.2021	22.07.2021

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CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.P. (MD) No.6838 of 2020

and

W.M.P. (MD) Nos.6243 & 6244 of 2020

and

W.P. (MD) No.3045 of 2019

and

W.M.P. (MD) Nos.2259 & 19657 of 2019

W.P. (MD) No.6838 of 2020:

C.Mathiselvi

... Petitioner

-vs-

1.The District Collector
Thoothukudi District
Thoothukudi

2.The Tahsildar
Ettayapuram Taluk
Thoothukudi District

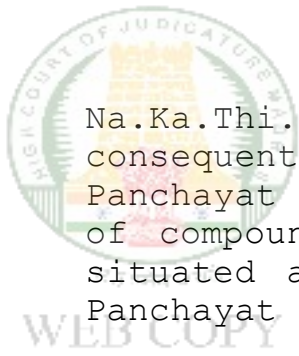
3.The Block Development Officer
Kovilpatti Block
Kovilpatti, Thoothukudi District

4.G.Vasantha
Block Development Officer
Kovilpatti Block
Kovilpatti, Thoothukudi District

5.Arunachalam

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus calling for the records of the third respondent in her proceedings in



Na.Ka.Thi.5/3801/19, dated 10.06.2020 and quash the same and consequently directing the third respondent herein to permit the Panchayat President to carry out the remaining construction work of compound wall surrounding the Panchayat Union Primary School situated at Survey No.144/2, Chidambarapuram Village, Kovilpatti Panchayat Union.

For Petitioner :Mr.G.Thalaimutharasu

For Respondents :Mr.A.K.Manickam

Government Counsel for R1 to R3

No appearance for R4

Ms.P.Jessi Jeeva Priya for R5

W.P. (MD) No.3045 of 2019:

C.Mathiselvi

... Petitioner

-vs-

1.The District Collector
Thoothukudi District
Thoothukudi

2.The Tahsildar
Ettayapuram Taluk
Thoothukudi District

3.The District Educational Officer
Kovilpatti Educational District
Kovilpatti, Thoothukudi District

4.The Commissioner
Kovilpatti Panchayat Union
Kovilpatti, Thoothukudi District

5.The Block Educational Officer
Kovilpatti Block
Kovilpatti, Thoothukudi District

6.Arunachalam

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of mandamus directing the respondents 1 to 5 herein to retrieve the Panchayat Union Primary School and its playground situated in Survey No.144/2 and 144/3 of Chidambarapuram Village, Ettayapuram Taluk, Thoothukudi District, by removing the encroachment made by the 6th respondent and to preserve the school building by constructing a pucca compound wall



around the school based on the petitioner's representation dated 01.11.2017, within the time limit stipulated by this Court.

For Petitioner :Mr.G.Thalaimutharasu

For Respondents :Mr.A.K.Manickam

Government Counsel for R1 to R5

M/s.P.Jessi Jeeva Priya for R6

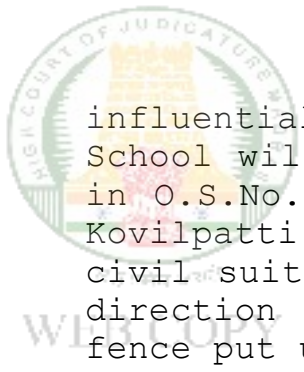
C O M M O N O R D E R

The petitioner in both the writ petitions is one C.Mathiselvi, wife of Thiru.A.S.Vaigunth and she is the President of Chidambarapuram Village Panchayat, Kovilpatti Panchayat Union, Thoothukudi District.

2. In W.P.(MD) No.6838 of 2020, the petitioner seeks for issuance of a writ of certiorarified mandamus to quash the order, dated 10.06.2020, passed by the Block Development Officer, Kovilpatti / third respondent and to direct the said officer to permit the Panchayat President to carry out the remaining construction work of compound wall surrounding the Panchayat Union Primary School situated at Survey No.144/2, Chidambarapuram Village, Kovilpatti Panchayat Union.

3. In W.P.(MD) No.3045 of 2019, the petitioner seeks for issuance of a writ of mandamus to direct the respondents 1 to 5, who are the District Collector, Tahsildar, District Educational Officer and two other Authorities, to retrieve the Panchayat Union Primary School and its playground situated in Survey Nos.144/2 and 144/3 of Chidambarapuram Village, Ettayapuram Taluk, Thoothukudi District, by removing the encroachment made by the sixth respondent - Arunachalam and to preserve the School building by constructing a compound wall around the School by taking note of his representation dated 01.11.2017.

4. The fact that there is a Panchayat Union Primary School housed in a fully constructed new building in Survey No.144/2 of Chidambarapuram Village is not in dispute. The School was established pursuant to a resolution passed by the then Panchayat Council in the year 2001. The petitioner would state that there is no compound wall surrounding the School building and one Arunachalam / fifth respondent in W.P.(MD) No.6838 of 2020 tried to encroach upon the vacant land adjacent to the School building by erecting a fence and obstructing the pathway to the School. Therefore, the petitioner filed W.P.(MD) No.3045 of 2019 to protect the interest of the School going children. According to the petitioner, the fifth respondent - Arunachalam was a highly



influential person and went to the extent of threatening that the School will be closed down on the strength of the decree obtained in O.S.No.302 of 2013, on the file of the District Munsif Court, Kovilpatti. It is stated that the further proceedings in the civil suit were stayed by the Division Bench of this Court and a direction was issued to the Tahsildar, Ettayapuram to remove the fence put up by the fifth respondent.

5. The petitioner would further state that rift occurred between her and the fourth respondent - Vasantha / Block Development Officer. She questioned the Block Development Officer for having laid a metal road using the gravel illegally mined from the Village Kanmoi and there were other issues, which were raised by the petitioner, which ultimately led to the lodging of a complaint by the petitioner against the Block Development Officer - Vasantha before the Vigilance and Anticorruption Department. Pursuant to the said complaint, the officials of the Vigilance and Anticorruption Department visited the Village on 09.06.2020 and inspected the works carried out in the Village. Thereafter, the said Block Development Officer was summoned to the Office of the Vigilance and Anticorruption Department and she attended the Office along with all the files. While so, the Block Development Officer, by proceedings dated 10.06.2020, stopped the construction work of the compound wall for the Panchayat Union Primary School, pursuant to the order passed by the District Collector. This order has been put to challenge in W.P.(MD) No.6838 of 2020.

6. W.P.(MD) No.3045 of 2019 was filed much earlier and the facts pleaded therein are no different except for making some more allegations against the sixth respondent alleging that he had tried to grab the Government property. Therefore, the petitioner sought for a direction to the official respondents to retrieve the land earmarked as playground for the Panchayat Union Primary School.

7. Mr.G.Thalaimutharasu, learned counsel appearing for the petitioner, would contend that the action of the Block Development Officer in abruptly stopping the construction of the compound wall is tainted with *mala fide* solely for the reason that the petitioner brought to light various illegalities committed by the Block Development Officer by lodging a complaint before the Vigilance and Anticorruption Department, whereby, she had floated the rules and various guidelines laid down by the Government. Further, it is submitted that the Block Development Officer has no jurisdiction to suspend or vary the order passed by the District Collector and the Tahsildar is not justified in issuing a stop work notice. Thus, the fourth respondent has abused her official position, which has resulted in an illegal order, dated 10.06.2020



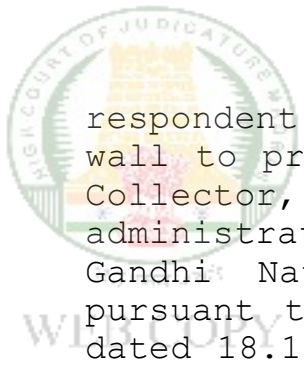
and the same is liable to be quashed.

8. The learned counsel has drawn our attention to the Resolution passed by the Village Panchayat Council, dated 07.08.2001; information furnished by the second respondent under the Right to the Information Act, dated 04.07.2013; Adangal Extract for Survey No.144/2; representation sent by the petitioner; photographs to show where the fence has been erected and also the complaint made by the petitioner to the Vigilance and Anticorruption Department against the Block Development Officer. Therefore, it is submitted that the land meant for the School has to be retrieved, compound wall has to be constructed and the property has to be preserved as a playground.

9. Mr.A.K.Manickam, learned Government Counsel, appearing for the official respondents, submitted that Survey No.144 of Chidambarapuram Village, Ettayapuram Taluk, stood classified as "Village Natham" in the settlement records. When Natham Settlement Scheme was introduced during the year 1985, a separate survey number, namely, 144/2, measuring an extent of 3.425 hectares was culled out and classified as "Government Manai". The Panchayat Union Primary School was located in Survey No.144/2 and in 2001, a School was constructed in an extent of 18 Cents and the remaining area was used as a playground for the School.

10. It is further submitted that the fifth respondent - Arunachalam, who is the owner of the adjacent land, filed a suit in O.S.No.302 of 2013 for declaration and mandatory injunction that the suit properties in Survey Nos.144/2 and 144/3 belong to him and an *ex parte* decree was passed in the suit on 02.08.2014. Aggrieved by such *ex parte* decree, the Tahsildar filed a petition to set aside the *ex parte* decree in I.A.No.657 of 2016, which was dismissed. Against the said order of dismissal, a civil revision petition was filed before this Court in C.R.P.(NPD) (MD) No.1399 of 2017, which was also dismissed by order dated 29.07.2017, on the ground that there is no convincing reason adduced for condoning the inordinate delay of 793 days in filing the petition to set aside the *ex parte* decree. Further, it is submitted that the fifth respondent filed an execution petition in E.P.No.19 of 2016, which was allowed and with the assistance of the Court Amin and other officials, on 04.02.2019, possession of the land, excluding 18 Cents wherein the School is located, was handed over to the fifth respondent.

11. It is further submitted that pursuant to the interim direction granted by the Division Bench in W.P.(MD) No.3045 of 2019, filed by the writ petitioner, vide order dated 12.02.2019, the Tahsildar, Ettayapuram, removed the fence put by the fifth

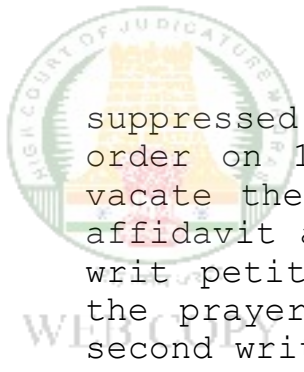


respondent. Since there was a request for constructing a compound wall to protect the children studying in the School, the District Collector, by proceedings dated 16.10.2019, accorded administrative sanction to construct compound wall under Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS), pursuant to which, the Block Development Officer, by proceedings dated 18.10.2019, issued work order to construct compound wall at the estimated cost of Rs.5.20 lakhs and technical sanction was accorded on 31.01.2020.

12. Further, it is submitted that the petitioner was elected as the Village Panchayat President during January, 2020 and after she took charge, without obtaining permission from the Union Engineer or Assistant Executive Engineer started the construction of the compound wall. The fifth respondent issued a legal notice on 03.06.2020 objecting to the commencement of the construction of compound wall stating that during pendency of the writ petition filed by the petitioner, the compound wall should not be constructed as it will be in violation of the order of the Executing Court. Therefore, legal opinion was obtained from the Law Officers and to avoid further complication, the impugned order was passed. Therefore, it is submitted that there is nothing illegal in passing the impugned order in the writ petition.

13. Mrs.P.Jessi Jeeva Priya, learned counsel appearing for the fifth respondent - Arunachalam that the suit filed by the fifth respondent was decreed and a decree of declaration and permanent injunction has been passed by the Civil Court by Judgment and Decree dated 02.08.2014. In the said suit, the respondents 1 and 2, who are the defendants, had appeared through the Government Pleader, but did not choose to file written statement and therefore, the *ex parte* decree was passed, which attained finality. Thereafter, the fifth respondent filed E.P.No.19 of 2016, on the file of the District Munsif Court, Kovilpatti and in the said execution petition, not only the respondents 1 and 2, but also the writ petitioner appeared through Government Pleader, but no counter affidavit was filed by them. The petition to condone the delay in filing the petition to set aside the *ex parte* decree was dismissed and the order was confirmed in C.R.P.(NPD) (MD) No.1399 of 2017. Thereafter, the execution petition in E.P.No.19 of 2016 was taken up and heard by the learned District Munsif, Kovilpatti and after following due process of law, the properties in Survey Nos.144/2 and 144/3 were delivered by the Court to the fifth respondent on 06.02.2019 and accordingly, the fifth respondent is in possession and enjoyment of the property.

14. It is further submitted that since these facts were



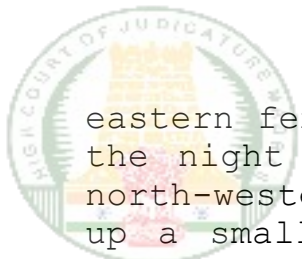
suppressed by the petitioner, the Court passed an *ex parte* interim order on 12.02.2019 and the fifth respondent has taken steps to vacate the interim order by filing a petition along with counter affidavit and the said petition was pending. Further, the present writ petition, namely, W.P.(MD) No.6838 of 2020 is identical to the prayer sought for in W.P.(MD) No.3045 of 2019 and hence, a second writ petition for the very same relief is not maintainable.

15. We have elaborately heard the learned counsel appearing for the parties and carefully perused the materials placed on record.

16. The Block Development Officer, in his counter affidavit, has stated that Survey No.144 of Chidambarapuram Village stood classified as "Village Natham" in the settlement records. During 1985, when the Natham Settlement Scheme was introduced, the said land was sub-divided and Survey No.144/2, measuring an extent of 3.425 hectares was culled out and classified as "Government Manai". In the said land, in an extent of 18 Cents, a School building has been constructed in the year 2001 and the remaining area, which was a vacant space, was being used as a playground.

17. The case of the fifth respondent in O.S.No.302 of 2013, on the file of the District Munsif Court, Kovilpatti, was that the first and third plaint schedule properties absolutely belong to him as the first plaint schedule property belonged to one S.Sundara Mahalingam Reddiar from whom, the fifth respondent's father purchased the same for a valuable consideration as early as on 25.06.1953 by means of a sale deed registered as document No.852 of 1953. The plaint third schedule property originally belonged to one S.Mallappa Reddiar, who sold the same to the fifth respondent's father during 1953 by a sale deed registered as document No.855 of 1953 and ever since the date of purchase, he is in peaceful possession and enjoyment of the property. The first plaint schedule property is a Natham house site and it is being used as vacant site (bfhl;lhuk;) by the fifth respondent / plaintiff and the property is shown as Village Natham in the Adangal Extract of Chidambarapuram Village and therefore, it cannot be construed as "Natham Promoke" and shall not vest with the Government.

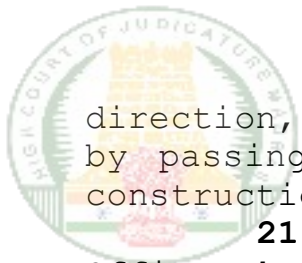
18. Further it is submitted that the fifth respondent has been in possession and enjoyment of the property for 60 years and thereby, perfected title by adverse possession also and he has put up fence on all four sides of the property 60 years ago. So far as the second plaint schedule property is concerned, the defendants 3 and 4, namely, the President of the Village Panchayat and one K.Ponnusamy, who was the then President of the Village Panchayat, in connivance of the Revenue Authorities, removed the north-south



eastern fence by trespassing the plaintiff first schedule property on the night of 28.05.2013 and started a small construction on the north-western side of the plaintiff first schedule property and put up a small School by encroaching a portion of the first plaintiff schedule property. This incident and other connected matters led to the filing of suit for declaration of title of the fifth respondent to the suit schedule property, for permanent prohibitory decree of injunction and for recovery of possession of the property, where the School building had been constructed and for a consequential mandatory injunction.

19. The first defendant in the suit is the District Collector, Thoothukudi; second defendant is the Tahsildar, Ettayapuram; third defendant is the President, Chidambarapuram Panchayat and the fourth defendant is the President of the Village Panchayat impleaded in his personal capacity. The official respondents had entered appearance through Government Pleader, but did not file counter and the suit came to be decreed *ex parte* by Judgment and Decree, dated 02.08.2014. The said Judgment has attained finality. The attempt made by the official respondents to set aside the *ex parte* decree has been rejected and the decree has become final. Insofar as the property, which was entered upon by the respondents, has been handed over to the fifth respondent by way of orders passed by the Executing Court. In such circumstances, it cannot be stated that the fifth respondent is in unlawful possession of the property in question. It is not clear as to why the District Collector, Tahsildar and President of the Village Panchayat did not effectively contest the suit proceedings by filing a written statement. As long as the decree stands, the possession and enjoyment of the lands in question by the fifth respondent cannot be termed to be as illegal. If according to the writ petitioner, the Judgment and Decree in O.S.No.302 of 2013 is vitiated for certain reasons, unless and until the decree is declared as null and void, such a plea cannot be raised by the petitioner. Therefore, the present attempt of the petitioner to circumvent the decree passed by the Civil Court, though it is an *ex parte* decree, cannot be permitted.

20. It is true that a School building should have a compound wall and precisely for that reason, the District Collector wanted to construct a compound wall by allotting funds from the Central Government Scheme. However, the petitioner appears to have made an overzealous attempt by commencing construction works without even obtaining approval of the Union Engineer and Assistant Executive Engineer. That apart, the construction was done when the earlier writ petition filed by the petitioner was pending, in which interim order was granted. Therefore, the District Collector was right in issuing a



direction, which was implemented by the Block Development Officer, by passing the impugned order, dated 10.06.2020, suspending the construction of the compound wall.

21. The petitioner would state that the Block Development Officer has no jurisdiction to pass such an order, because, funds are sanctioned by the Government and therefore, he shall abide by the directions that may be issued by the District Collector. In any event, the attempt made by the petitioner appears to have precipitated the problem, which might have led to certain other untoward incidents and therefore, the Authorities were right in passing the impugned order dated 10.06.2020. If the petitioner, who is the President of the Village Panchayat, was interested in protecting the School building and the School going children, her action should be in accordance with law by taking effective steps to declare the Judgment and Decree in O.S.No.302 of 2013 as null and void. Without adopting such legal recourse, any shortcut method will obviously not lead to a fruitful result.

22. Photographs have been produced during the course of argument that the access to the School building has not been blocked and the fence put up by the fifth respondent is in existence. Therefore, the construction of the compound wall around the School building is not feasible as of now on account of the Judgment and Decree obtained by the fifth respondent. Therefore, we leave it open to the petitioner to workout her remedies in accordance with law. We make it clear that the fifth respondent shall not interfere with the School building or the free ingress and egress of the School children, Teachers and Parents to the School building nor object to any functions, which are being done inside the School, which in no manner interferes with the area, which has been fenced by the fifth respondent.

23. Thus, for the above reasons, while declining to grant the relief sought for, the writ petitions are disposed of with the observation that the fifth respondent shall not interfere with the School building or the free ingress and egress of the School children, Teachers and Parents to the School building nor object to any functions, which are being done inside the School, which in no manner interferes with the area, which has been fenced by the fifth respondent. No costs. Consequently, connected miscellaneous petitions are closed.

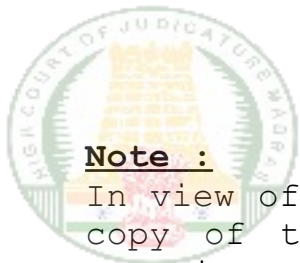
Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)



Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

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To:

- 1.The District Collector,
Thoothukudi District,
Thoothukudi.
- 2.The Tahsildar,
Ettayapuram Taluk,
Thoothukudi District.
- 3.The Block Development Officer,
Kovilpatti Block,
Kovilpatti, Thoothukudi District.
- 4.The District Educational Officer,
Kovilpatti Educational District,
Kovilpatti, Thoothukudi District.
- 5.The Commissioner,
Kovilpatti Panchayat Union,
Kovilpatti, Thoothukudi District.
- 6.The Block Educational Officer,
Kovilpatti Block,
Kovilpatti, Thoothukudi District.

+2 CC to M/s.P.JESSI JEEVA PRIYA, Advocate SR-23534&23535[F] dated 22/07/2021

COMMON ORDER

IN

W.P. (MD) Nos.6838 of 2020 & 3045 of 2019

and

W.M.P. (MD) Nos.6243, 6244 of 2020 1957 & 2259 of 2019

22.07.2021

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