

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE
AND
THE HON'BLE MRS.JUSTICE N.MALA

W.P.No.29384 of 2017
and
W.M.P.No.31659 of 2017

1. J.Premavathi
2. K.Jaganathan
3. R.Sivasubramani

..Petitioners

vs

1. State of Tamilnadu,
Rep. by the Secretary to Government,
Department of Land Administration,
Secretariat, Chennai-9.
2. The District Collector,
Erode District.
3. The District Revenue Officer,
Erode.
4. The Revenue Divisional Officer,
Erode.
5. The Assistant Director,
Department of Survey and Land Records,
Erode.
6. Tahsildar,
Erode.
7. Firka Surveyor,
Taluk Office, Erode.
8. The Commissioner,
Panchayat Union, Erode.

9. The Executive Engineer,
Water Resources Organisation,
Public Works Department,
Erode.
10. The Executive Engineer,
Water Resources Organisation,
Lower Bhavani Irrigation Division,
Erode 638 002.
11. Pappayammal
12. Selvarathinam
13. Iyarkai Valam Matrum Perumball Odai
Padukappu Nalasangam, Rep. by its
President, K.Shanmugasundaram.
(R13 Imp. As per court order dated 13.02.2018
in W.M.P.No.3213/2018 in W.P.No.29384/2017)
14. S.Krishnamoorthy
15. C.Balasubramani
16. K.R.Sampathkumar
17. K.R.Rangasamy
18. K.R.Palanisamy ...Respondents
(R14 to 18 Imp. Vide court order
dated 22.02.2021 made in
W.M.P.No.10020/2018 in W.P.29384/2017)

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the order bearing Na.Ka.No.15375/2017/U1 dated 20.6.2017 on the file of the 2nd respondent and the alteration made by the 7th respondent in the A-Register of No.44 Kadhiraipatti Village based on the same and quash the same and consequently forbearing the respondents from reducing, altering or disturbing the length and width of the portion of the Natural Water Course viz., the Odai (Vadigal) bearing R.S.No.147/3 in Kadirampatti Village, Erode as entered in the A-Register, Field Map etc. permitting any encroachment by any one therein and obstructing the free flow of rain water and surplus/seepage water discharged from LBP Ayacut lands flowing through the same in any manner.

For the Petitioner : Mr.T.P.Manoharan
Senior Counsel
for Mr.T.M.Naveen

For the Respondents : Mr.P.Muthukumar
State Govt. Pleader
assisted by Mr.K.M.D.Muhilan,
Govt. Advocate for RR 1 to 8

: Mr.Naveen Kumar Murti
for R11 and R12

: Mr.V.Lakshminarayanan
for Mr.V.Vasantha Kumar
for RR 14 to 18

: No appearance for RR 9 and 10

: Mr.T.V.Suresh
for M/s.Genicon & Asso. for R-13

ORDER

(Order of the Court was made by
the Hon'ble Chief Justice)

By this writ petition, a challenge is made to the order dated 20.06.2017 passed by the District Collector. Challenge to the order has been made precisely on the ground of competence to reclassify the land in question.

2.According to the petitioner, the District Collector has no competence to reclassify the land as competence for it lies with the State Government. The State Government has not passed any order to reclassify the land, therefore, the order of the District Collector to reclassify the land to 'drainage canal and cart track' is wholly illegal.

3.Given the facts of this case, it is submitted that as per the records, S.F.No.121 was shown to be only 'drainage canal' and not 'drainage canal and cart track'. However, the District Collector has reclassified the land in S.F.No.121 to be as 'drainage canal and cart track'. The entry of 'cart track' is illegal and therefore, the order has to be set aside. Reference of various orders and litigations before this Court has been given where the issue was largely to issue direction to remove the encroachment and from time to time, directions were given.

4.Some orders refer the land to be 'drainage canal and footpath' while in other cases, it is shown to be 'drainage canal' only. In view of the aforesaid, the prayer is to set aside the order of the District Collector and to maintain the revenue entries, as they exist in A-Register.

5.Learned counsel appearing for the 13th respondent

supporting the case of the petitioner, submitted that the land in S.F.No.121 which was renumbered as R.S.No.147/3 was classified only as 'drainage canal' and not 'drainage canal and footpath' or 'drainage canal and cart track'. Therefore, the prayer is to set aside the order of the District Collector.

6.Learned counsel appearing for the other respondents, however, opposed the prayer made by the learned counsel for the petitioner supported by respondent No.13. It is submitted that the order of the District Collector is not to reclassify the land rather to restore the entry as was existing and therefore, it has wrongly been termed to be an order for reclassification. It is for the reason that the order aforesaid was passed on the application made by the private respondents other than respondent No.13 to maintain the entry as was existing in the records. It was not to seek reclassification of the land but restoration of the entry by making correction. The District Collector has passed a detailed order to maintain the entry as was existing in the record and for that, he has given detailed reference of the entries in reference to R.S.No.147/3, which was the old S.F.No.121. Since it is not a case of reclassification, an order was not required to be passed by the Government rather, for that, the District Collector is competent.

7.Learned counsel for the respondents have made reference to various documents and orders passed by this Court from time to time on the petitions to seek directions to remove the encroachment. In those petitions also, the reference of S.F.No.121, renumbered as R.S.No.147/3 has been given showing it to be a 'drainage canal and footpath' (cart track). Accordingly, the prayer is not to cause interference in the order of the District Collector.

8.Learned State Government Pleader submits that the original entry in the register was of 'drainage canal and footpath' and the old register was produced before the Court to show the nature of land of S.F.No.121. It was made available to all the counsels for their perusal because prima facie, the Court is of the opinion to maintain the entry as was existing in the old record of the year 1913. The old register was perused even by the Court to see the entry of 'drainage canal and footpath' against S.F.No.121. In view of the above, the issue has to be decided in reference to the challenge of the order of the District Collector.

9.The order under challenge, translated in English, shows that the application was for reclassification though it has been contested by the private respondents other than respondent No.13. It is stated that an application was made to correct the entry and maintain it as was existing in the original record.

The matter has to be considered in the light of the aforesaid and to analyse whether there was an application for reclassification or correction of the entry.

10. We have gone through the entire order of the District Collector. We do not find it to be a case of reclassification rather the entire order makes a reference to the old record to maintain the entry as was existing then. For ready reference, the relevant paragraphs of the order of the District Collector are quoted hereunder:

"2) The Government Poramboke land bearing R.S.No.147/3 in Kadirampatti Village, Erode taluk, measuring 0.12.0 Hectare is recorded in the A-Register as "Drainage Canal". In the corresponding Old S.F.No.121, it is recorded in the old village records that the Government Poramboke, measuring 0.23.0 Hectare is "Footpath". In the field map relating to the present R.S.No.147/3, it is recorded as "Footpath and Water Course Path". In the old field map (relating to S.F.No.121), no water course path is recorded.

3) In the circumstances, on perusal of the Written Statement filed by the 2nd Defendant - the Tahsildar, Erode in O.S.No.17/2010 on the file of the District Munsif Court, Erode and in the same Suit, the Advocate Commissioner's Report and Sketch, the Certificate bearing Na.Ka.138/2015/D1 dated 19.03.2015 issued by the Tahsildar, Erode, the Counter Affidavit filed by the Block Development Officer, Erode in W.P.No.10572/2010 before the Hon'ble High Court, Chennai, the Order passed in the said W.P. on 13.04.2015, the Counter Affidavit filed by the Tahsildar, Erode, to W.P.No.770/2018 before the Hon'ble High Court, Chennai, the Order of the High Court in the said case and the Report of the Tahsildar, Erode and Taluk Deputy Inspector, Erode and related documents, it is come to the knowledge that in R.S.No.147/3, along with drainage canal, a cart-track is also in use at present. From the re-survey of the lands, based on the flowing of seepage water, it is entered only as drainage canal in the A-Register. As existing on ground, cart-track was omitted to be entered."

11. The order quoted above shows that a report was called from the subordinate officers, apart from the certificate issued by the Tahsildar, Erode and other documents. Even the written statement filed by the Tahsildar, Erode, counter-affidavit filed by the Block Development Officer, Erode in the Civil Court and the orders passed by this Court in the writ petitions to seek removal of the encroachment were taken into consideration. It was found that the entry in the A-Register and old R.S.R. shows

that R.S.No.147/3 is 'drainage canal and cart-track' and accordingly, the Assistant Director, Department of Survey and Land Records, Erode and the Tahsildar, Erode were directed to correct the entry and record as 'drainage canal and cart-track' in the A-Register and Field map. Hence, we are not in agreement with the learned counsel for the petitioner that the order aforesaid is for reclassification of the land in Old S.F.No.121 and new R.S.No.147/3 rather it is an order to correct the entry in the Register.

12.To do justice and as agreed by the learned counsel for the parties, we are of the view that whatever be the entries in the old register of 1913, the same have to be maintained in the same manner and accordingly, should be treated to be a land of 'drainage canal and footpath'. The word 'cart-track' given by the District Collector is to be substituted by 'footpath' and accordingly, the entry against old S.F.No.121, New R.S.No.147/3 is to be maintained as 'drainage canal and footpath'. The order of the District Collector is substituted to that extent with a direction to the revenue authorities to make entries accordingly so that there may not be further dispute in that regard. The land in question, that is Old S.F.No.121, New R.S.No.147/3 would accordingly be recorded, as directed above, that is 'drainage canal and footpath' and accordingly, the authorities are directed to maintain the land free from encroachment and if exists, it would be removed.

With the aforesaid, interference in the order of the District Collector is made with the substitution of the entry in the Register, as indicated above and the writ petition is, accordingly, disposed of. No costs. Consequently, W.M.P.No.31659 of 2017 is closed.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

sra

To:

1. The Secretary to Government of Tamilnadu,
Department of Land Administration,
Secretariat, Chennai-9.

2. The District Collector,
Erode District.

3. The District Revenue Officer,
Erode.
4. The Revenue Divisional Officer,
Erode.
5. The Assistant Director,
Department of Survey and Land Records,
Erode.
6. The Tahsildar, Erode.
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Panchayat Union, Erode.
9. The Executive Engineer,
Water Resources Organisation,
Public Works Department, Erode.
10. The Executive Engineer,
Water Resources Organisation,
Lower Bhavani Irrigation Division,
Erode 638 002.

+2cc to Mr.Naveenkumar Murthi, Advocate, S.R.No.41080

+1cc to Mr.T.M.Naveen, Advocate, S.R.No.40493

+1cc to M/s.Genicon & Associates, S.R.No.40567

+1cc to Mr.V.Vasanthakumar, advocate, S.R.No.40784

+1cc to the Government Pleader, High Court, Madras S.R.No.40966

+1cc to State Government Pleader, High Court,
Madras, S.r.No.40716

W.P.No.29384 of 2017

CA(CO)
RGA(14/07/2022)