



W.A(MD)No.1514 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.09.2022

CORAM:

THE HONOURABLE MRS.JUSTICE J. NISHA BANU

and

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

W.A(MD)No.1514 of 2011

and

M.P.(MD)No.1 of 2011

C.Karunanidhi

.. Appellant

Vs.

1.The Revenue Divisional Officer,
Pattukkottai,
Thanjavur District.

2.The Tahsildar,
Taluk Office,
Pattukottai,
Thanjavur District.

...Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent praying this Court to set aside the order passed by this Court in W.P(MD)No.123 of 2011, dated 14.11.2011.

For Appellants : Mr.K.K.Ramakrishnan

For Respondent : Mr.D.Sasikumar,

Additional Government Pleader



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JUDGMENT

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J. NISHA BANU, J.

AND

N. ANAND VENKATESH, J.

This Writ Appeal has been filed against the order passed by the learned Single Judge made in W.P.(MD) No.123 of 2011, dated 14.11.2011.

2. The subject matter of challenge in the writ petition pertains to the order passed by the first respondent, dated 08.12.2010, wherein, the appellant / petitioner has been directed to remove the fencing put up in Survey No.32/8C on the east-west side and to restore the irrigation channel, which is said to have been used by the other agriculturists nearby.

3. Heard, Mr.K.K.Ramakrishnan, learned counsel for the petitioner and Mr.D.Sasikumar, learned Additional Government Pleader appearing for the respondents.



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4. The main ground that was urged by the learned counsel for the appellant is that before the first respondent passed the order, no opportunity was given to the appellant/petitioner to put forth his defence and to submit the relevant documents. The learned counsel submitted that the appellant/petitioner is enjoying an extent of 44 cents as mentioned in the sale deed, dated 01.02.1989 and the fencing has been put up within the boundaries as mentioned in the sale deed. The learned counsel, therefore, submitted that there is no question of encroachment upon the very property that belongs to the appellant/petitioner and even without ascertaining these facts, the first respondent has proceeded to pass an order, which adversely affects the civil rights of the petitioner.

5. The learned Additional Government Pleader appearing on behalf of the respondents submitted that the first respondent had received a report from the second respondent and made an enquiry from the public and found that an irrigation channel which has been used from time immemorial has been virtually blocked by the appellant/petitioner by putting up a barbed wire fencing on the east-west side and thereby, the irrigation for nearly 40 acres of land was prevented by the appellant/petitioner. The learned Additional Government Pleader



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submitted that public interest is involved in this case and hence, the first respondent had to immediately take a decision and there is no scope for interfering with the same. Accordingly, the learned Additional Government Pleader sought for dismissal of the writ appeal.

6. This court has carefully considered the submissions made on either side and perused the materials available on record.

7. In the present case, the main dispute is with regard to the land which has been put to use by the appellant/petitioner and whether the barbed fencing put up by the petitioner falls within the land purchased by the appellant/petitioner through a registered sale deed, dated 01.02.1989. The specific case of the appellant/petitioner is that the barbed fencing has been put within the four boundaries and within the 44 cents that is under possession and enjoyment of the appellant/petitioner. This factual aspect has to be considered and unfortunately, the first respondent has proceeded to pass the impugned order even without affording an opportunity to the appellant/petitioner.



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8. In the present case, the dispute pertains to the civil right of the appellant/petitioner over the subject property and the order passed by the first respondent has civil consequences. Hence, such an order could not have been passed by the first respondent without putting the petitioner on notice. On this ground alone, the order passed by the first respondent is liable to be interfered by this Court. In any case, the appellant/petitioner had the advantage of an interim order passed by this Court, till date. Therefore, no prejudice will be caused, if the matter is remanded back to the file of the first respondent by issuing appropriate directions.

9. In the light of the above, the impugned proceedings of the first respondent, dated 08.12.2010 is hereby quashed. There shall be a direction to the first respondent to issue a fresh notice to the appellant/petitioner and call him for an enquiry. The first respondent shall permit the petitioner to putforth his written defence along with relevant documents. An opportunity of personal hearing shall also be given to the appellant / petitioner. Thereafter, the first respondent shall consider the same on its own merits and pass orders strictly in



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accordance with law. Till this process is completed, the present *status-quo* shall be maintained.

10. In the result, the order passed by the learned Single Judge made in WP(MD) No.123 of 2011, dated 14.11.2011, is hereby set aside and the Writ Appeal is allowed in the above terms. No costs. Consequently, connected miscellaneous petition is closed.

[J.N.B, J.] & [N.A.V., J.]
28.09.2022

Index: Yes/No
Internet: Yes/No
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To

1. The Revenue Divisional Officer,
Pattukkottai,
Thanjavur District.

2. The Tahsildar,
Taluk Office,
Pattukkottai,
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JUDGMENT MADE IN
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28.09.2022