



W.P.(MD) No.327 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

and

THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.P.(MD) No.327 of 2022

Krishnan

... Petitioner

Vs.

- 1.The District Collector,
Kanyakumari District,
Nagercoil.
- 2.The Tahsildar,
Agateeswaram Taluk,
Nagercoil,
Kanyakumari District.
- 3.The Assistant Executive Engineer,
W.R.O., P.W.D.,
Irrigation Section,
Public Works Department,
Nagercoil,
Kanyakumari District.



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4.The Correspondent,
Arockia Annai Academy CBSE School,
Zion Garden,
Near Salaiputhur Bus Stop,
Pottayadi – Mylaudy Road,
Kanyakumari – 629 403.

5.The Block Development Officer,
Agasteeshwaram Block,
Perumalpuram,
Kottaram Post,
Kanyakumari District.

6.The Village Administrative Officer,
Kulasekarapuram Village,
Kanyakumari District.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents forthwith to remove the encroachment made in the marked channel connecting Idavathai Sluice with Puthanaru Channel on the land in Survey Nos.722/1, 722/2 and 721/15 of Kulasekarapuram Village, Agateeswaram Taluk, Nagercoil, Kanyakumari District and restore the same to its original position as marked channel namely Idavathaimadai Kalvai.

For Petitioner : Mr.P.T.Ramesh Raja

For Respondents : Mr.P.Thilak Kumar,
Govt. Pleader for R1 to R3, R5 & R6
Mr.K.Vamanan for R4



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ORDER

[Order of the Court was made by R.MAHADEVAN, J.]

This Writ Petition has been filed for issuance of a Writ of Mandamus, directing the respondents to remove the encroachment made in the channel connecting Idavathai Sluice with Puthanaru Channel on the land in Survey Nos. 722/1, 722/2 and 721/15 of Kulasekarapuram Village, Agateeswaram Taluk, Nagercoil, Kanyakumari District and to restore the same to its original position.

2. It is the case of the petitioner that the fourth respondent is running a school in the name and style of 'Arockia Annai Academy CBSE School'. It is the complaint of the petitioner that the fourth respondent obliterated the channel which was shown in the FMB and constructed a compound wall blocking free flow of water. Hence, the petitioner has filed this writ petition.

3. The learned counsel appearing for the second respondent has filed a counter affidavit stating that the lands in re-survey Nos.722/1, 2, 3, 4 and 723/1A1 in Kulasekarapuram Village, Agateeswaram Taluk, Kanniyakumari



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District are the patta lands of the fourth respondent and it is admitted that the water channel is running through the fourth respondent's land where the school is in existence as on date. It is further stated by the second respondent in the counter that the first respondent issued directions to his subordinates to conduct a field inspection and that the authorities have directed the fourth respondent to restore the water channel to its original position to ensure free flow of water through the channel.

4. The fourth respondent has filed a counter affidavit stating that as per the direction of the second respondent, the fourth respondent cleaned the bushes, which was grown in the channel and also removed the soil as well as mud, which obstructed the watercourse. However, the adjacent land owners have not cleaned the water channel running through their lands, which is obstructing the free flow of the water.

5. After hearing the submissions of all the parties, this Court by order dated 20.07.2022, appointed Mr.B.Saravanan, as Advocate Commissioner and



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directed the Advocate Commissioner to ascertain with regard to the following details:

“a) Whether the water channel now restored, serves the purpose to ensure free flow of water to the petitioner's land on the other side?

b) whether the fourth respondent has removed substantial quantity of sand from the field so as to prevent free flow of water to the other end?

c) whether the channel beyond the fourth respondent's property has to be formed or deepened to ensure free flow of water'"; and

d) The Advocate Commissioner may also note down the physical features which are required to be noted down by the petitioner as well as the fourth respondent.”

6. The learned Advocate Commissioner has filed his report dated 26.08.2022, in which it is stated that due to the removal of the sand at the land in S.No.715, the water sub-channel has been obliterated and there is no way for the water to flow to the land in S.Nos.720 and 721 to reach the lands of the fourth respondent in S.No.722/1, 2 and the writ petitioner in S.No.722/9. Therefore,



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unless the sub-channel is restored to its original state at the land in S.No.715, the free flow of water to the petitioner's land is not possible. It is further stated in the Advocate Commissioner's report that there are no encroachment in the water channel.

7. Considering the fact that there is no encroachment in the water channel as projected by the petitioner, this Writ Petition is disposed of granting liberty to the petitioner to approach the authorities concerned, if any other encroachments are noticed. No costs.

[R.M.D., J.] [J.S.N.P., J.]

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