



W.P.(MD)No.23207 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 09.11.2022

CORAM

THE HONOURABLE Mrs.JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition (MD) No.23207 of 2022

Dr.P.Paul Pandian

.. Petitioner

Versus

- 1.The District Collector,
Kanyakumari District,
Nagercoil.
- 2.The Revenue Divisional Officer,
Nagercoil,
Kanyakumari District.
- 3.The Executive Officer,
Ganapathipuram Town Panchayat,
Ganapathipuram,
Kanyakumari District.
- 4.The Tahsildar,
Agateeswaram Taluk,
Nagercoil,
Kanyakumari District.

.. Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents 2 to 4 herein to consider the petitioner's representation dated 17.08.2022 and pass appropriate order to remove the prop root and some branches of Banyan Tree, stands encroaching in the petitioner's Patta land in Survey No.660/4A in Alencottai, Neendakarai-B Village, Agastheeswaram Taluk, Kanyakumari District, within a time frame to be fixed by this Court.



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For Petitioner : Mr.V.Meenakshi Sundaram
for Mr.R.Murugan

For Respondents 1, 2 and 4: Mr.D.Sadiq Raja
Additional Government Pleader

For 3rd Respondent : Mr.D.Sasikumar
Additional Government Pleader

ORDER

The petitioner has prayed for issuance of a Writ of Mandamus, directing the respondents 2 to 4 herein to consider the petitioner's representation, dated 17.08.2022 and pass appropriate orders to remove the prop root and some branches of Banyan Tree, protruding in the petitioner's Patta land in Survey No.660/4A in Alencottai, Neendakarai-B Village, Agastheeswaram Taluk, Kanyakumari District, within a time frame.

2. The petitioner submitted that his father purchased the land in new S.No.660/4, old S.No.9735, measuring an extent of 24.23 cents out of 49 Ares, situated at Alencottai, Neendakarai-B Village, Agastheeswaram Taluk, Kanyakumari District, in the year 1977. During the life time of his father, he executed a settlement deed, dated 05.03.1999, vide Document No.579/1999. Now, the land in question is sub-divided into new S.No.660/4A. The revenue records also mutated in the name of the petitioner and joint Patta No.4766 was also issued in his name.



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3. The petitioner further submitted that there is a more than 300 years old Banyan tree standing near the Temple and a branch leads and crossed the road and landed in his property. Since the Banyan tree is a very old one, the branches may be damaged and fell down on the road, which may cause injuries and life threat to the public passing through the road. The Banyan tree is the biggest tree, which sends down its root smoother their hosts and grow into stout. The Banyan tree standing in the roadside Poromboke land, is encroaching the petitioner's Patta land and the prop root and some portions of the branches of the Banyan tree are protruding on the petitioner's Patta land. In the said circumstances, the petitioner submitted a representation, dated 09.06.2011, to the Sub-Collector, Nagercoil and the fourth respondent/Tahsildar, Agatheeswaram Taluk, with a request to cut and remove the prop roots and some branches of the said tree protruding on the petitioner's Patta land. In pursuant to the said application, the Sub-Collector and the fourth respondent visited the spot and confirmed the above said facts and the Sub-Collector, Nagercoil, vide his proceedings dated 02.01.2013, passed an order, directing the Executive Officer, Ganapathipuram Panchayat, stating that as the said Banyan tree is standing in the roadside Government Poromboke land, the portions of the said tree protruding on the said Patta land have to be removed at the cost of Panchayat on public auction and the auctioned amount to be remitted to the Government account. However, no action was taken



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either by the Panchayat or by the Revenue Department for cutting and removing the prop root and some branches of the said tree. Hence, the petitioner submitted a request dated 12.09.2013, to the first respondent/District Collector to expedite the process. During the last week of October, 2013, the Executive Officer of Ganapthipuram Panchayat had notified an open tender for cutting of prop root and branches of the said tree in the local newspaper, fixing the cut-off date as 30.10.2013.

4. The petitioner further submitted that one Dr.R.S.Lal Mohan, a local public from the petitioner's Village had filed W.P.(MD)No.17533 of 2013, challenging the proceedings of the Sub-Collector, Nagercoil, dated 02.01.2013. Without hearing the petitioner, a Division Bench of this Court, vide order dated 20.11.2018, quashed the said proceedings and allowed the Writ Petition. Due to his higher education and avocation, the petitioner left his native place almost 35 years back and he has not received any intimation about the filing of the said Writ Petition. Now, he came back to his native place after superannuation on 31.05.2021 from New Delhi. The said Banyan tree does not belong to any individual and the main trunk is located in the roadside Poromboke land. Due to such inconvenience, the petitioner is not able to make use of the said land either for construction or for agriculture purpose. In the said circumstances, the petitioner submitted a representation dated 17.08.2022,



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to the respondents for cutting and removing some branches and prop root portions of the tree, occupying his Patta land. However, there is no progress and hence, having left with no other alternative efficacious remedy, the petitioner has approached this Court by way of filing the present Writ Petition for the relief stated supra.

5. The learned Additional Government Pleaders appearing for the respondents submitted that the Division Bench of this Court in W.P.(MD)No. 17533 of 2013, had issued notice to all the parties concerned, including the petitioner herein, who is arrayed as sixth respondent in the said Writ Petition, but the petitioner did not appear and therefore, it is not correct to state that he was not given any notice and the said Writ Petition was allowed on 20.11.2018, holding that there was no enquiry conducted by the second respondent before taking a decision to cut the Banyan tree and there were no residential houses adjacent to the place, where the Banyan tree is standing and the said tree is providing a green cover to the area in question and prayed for dismissal of the Writ Petition.

6. On a perusal of the material available on record, it is seen that though the petitioner needs the said land for construction, there is no detail available in the affidavit regarding the extent of the land needed for



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construction. Further, the petitioner has also not stated in what manner the said tree is causing trouble for him to construct the house. Though notice was served on the petitioner in the said Writ Petition, he was not present before the Division Bench of this Court when the matter was decided on 20.11.2018. The learned counsel appearing for the petitioner submitted that a portion of the said tree is occupying the Patta land of the petitioner. The petitioner's land is situated in S.No.660/4A in the north east boundary of S.No.660/1, in which, the Banyan tree is standing and the Banyan tree is spread over and the prop root is in the north west boundary of the petitioner's Patta land in S.No.660/4A and the branches are spread over 10 to 15 feet and 35 to 40 feet just from the ground level. Even though this Court is not inclined to interfere with this issue as the same has already been decided, the petitioner pleads that, he would approach the competent authority, for considering his request for cutting and removing the said branches, which has spread in his Patta land in S.No.660/4A.

7. Hence, the authorities concerned can consider the representation of the petitioner, dated 17.08.2022, on the subsequent developments, and pass appropriate orders based on the earlier Court's proceedings and his plea that the tree has grown in his Patta land, within a period of eight weeks from the date of receipt of a copy of this order.



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WEB COPY 8. This Writ Petition stands disposed of with the above direction and

observation. No costs.

Index : Yes/No
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09.11.2022

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V.BHAVANI SUBBAROYAN, J.

smn2

Order made in
W.P.(MD) No.23207 of 2022

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