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WP No. 1993 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2023

CORAM :

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Petition No. 1993 of 2018
and
WMP No. 2504 of 2018

A. Eswaramoorthy

.. Petitioner

Versus

1. The District Collector
Erode District
Erode - 638 011
2. The Tahsildar,
Taluk Office
Modakurichi - 638 104
Erode District
3. The Executive Engineer,
Water Resources Organization Department,
Public Works Department
Lower Bhavani Basin Division
Konavaikkal, Erode District - 638 001
4. The Executive Engineer,
Agricultural Engineering Department,
No.63/74, Avvaiyar Street, Teachers Colony,
Erode - 638 011.

5. V.Palanisamy
6. M.Satheeshkumar

.. Respondents



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Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the entire records relating to the impugned order passed by the third respondent in his proceedings Sae.Mu.No.Ko.507/2017/E.E, dated 18.12.2017 and quash the same and consequently directing the third respondent to restore the original position of the three sub canals existing in R.S.No.61/9, Kurukkapalayam village, Modakurichi Taluk, Erode District.

For Petitioner : Mr. C. Prakasam
For R1 to R4 : Mr. A. Selvendran
Special Government Pleader
For R5 & R6 : No appearance

ORDER

(Order of the Court was made by R. MAHADEVAN, J)

The petitioner has filed this writ petition seeking to issue a Writ of Certiorarified Mandamus to call for the entire records relating to the order passed by the third respondent in his proceedings Sae.Mu. No.Ko. 507/2017/E.E, dated 18.12.2017, quash the same and consequently direct the respondents to restore the original position of the three sub canals existing in R.S.No.61/9, Kurukkapalayam village, Modakurichi Taluk, Erode District.

2. According to the petitioner, he is an agriculturist and having his own patta land in R.S. No.134/1, Kangayampalayam Village, Modakurichi Taluk, Erode District. It is further stated that he is irrigating his lands from the water available in Kalingarayan Canal sluice through the branch canal situated



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in Survey No. 61/9 in Kurukkapalayam Village, Modakurichi Taluk. The water from this canal, according to the petitioner, is the only source for him and others in his Village to irrigate their lands. The grievance of the petitioner is that the respondents 5 and 6 have encroached the said canal and attempted to use the same as a cart track to reach their private lands, with the result, the free flow of the water in the canal gets affected.

3. The petitioner would further contend that earlier, in the year 2011, Writ Petition No. 21342 of 2011 was filed before this Court by one of his neighbours for removal of the encroachment. In spite of direction issued in WP No. 21342 of 2011, the encroachments were not removed. Therefore, the petitioner filed WP No. 21207 of 2017 before this Court for removal of the encroachments in the water canal. On 11.09.2017, this Court directed the respondents 2 and 3 to dispose of the representation of the petitioner after causing an enquiry. Pursuant to the direction issued by this Court, the second respondent along with the Surveyor, Village Administrative Officer and officials from the Public Works Department surveyed the land on 11.07.2017. After such site inspection, the third respondent passed the impugned order dated 18.12.2017 stating that there was no encroachment made in the water bodies by the respondents 5 and 6 and therefore the question of



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removing the encroachment, said to have been made in R.S. No. 61/9, does not arise. Aggrieved by the said order dated 18.12.2017, the present writ petition is filed.

4. The learned counsel for the petitioner submits that the third respondent has passed the order dated 18.12.2017 by solely relying upon the report of the Village Administrative Officer, without calling for such a report from the officials of the Public Works Department such as Assistant Executive Engineer or Joint Executive Engineer to ascertain the nature of encroachment made by the respondents 5 and 6. It is further stated that the third respondent, in the earlier writ petition filed by the petitioner in WP No. 21207 of 2017, has submitted that two out of three sub canals have been obliterated. But contrary to such statement made in WP No. 21207 of 2017, the third respondent has passed the impugned order as if no encroachment at all exists in the land in Survey No. 61/9. The third respondent, for the reasons best known, did not take note of the fact that the respondents 5 and 6 are attempting to convert the canal as a pathway to reach their land. The third respondent also failed to consider that due to the encroachment made by the respondents 5 to 6, water flow in the canal has been affected and thereby the petitioner and others could not irrigate their lands. The learned counsel for the petitioner therefore prayed



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for setting aside the order dated 18.12.2017 of the third respondent by allowing the writ petition.

5. The learned Special Government Pleader appearing for the respondents 1 to 4 placed reliance on the counter affidavit filed by the third respondent and submitted that a site inspection has been carried out on 08.11.2017 before passing the order dated 18.12.2017, which is impugned in this writ petition. Such inspection revealed that the canal in question has not been damaged or the flow of water interrupted in any manner. It is further submitted by the learned Special Government Pleader that the free flow of water and the structures of the canal are not affected due to the usage of a portion of the canal poromboke land in R.S. No. 61/9 of Kurukkapalayam Village as cart track by the farmers of that area. According to the learned Special Government Pleader, the usage of one part of the canal land in R.S. No. 61/9 by the farmers of the area is being continued on public interest and no encroachment is made by any individual for their personal benefit. Further, the conclusion of the third respondent is not only on the basis of the report of the Village Administrative Officer but upon personal inspection of the site jointly with the officials of the Revenue Department, Water Resource Department and Agricultural Engineering Department. In any event, as there



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is no encroachment of the water body by any individual, much less the respondents 5 and 6, the question of removing such encroachment will not arise. The learned Special Government Pleader therefore prayed for dismissal of the writ petition.

6. When the matter is taken up for hearing, there is no representation for the respondents 5 and 6. However, on behalf of the respondents 5 and 6, a counter affidavit has been filed in this writ petition in which it was stated that the petitioner is not doing any agricultural activities in his land by using the water from the canal in question. On the other hand, the petitioner is running a brick klin unit and exploiting the water resources for commercial purpose. Further, it is stated that the patta No. 309 produced by the petitioner himself clearly shows that the land owned by him is *punja* land and not coming under the purview of Ayacut land under the Kalingarayan Canal Scheme. It is also stated that the land measuring 24.64 acres under the sluise No.274 are owned by 33 agriculturists with different extents. The land in R.S. No. 61/9 referred to by the petitioner in Kurukkupalayam Village has been used by all the aforesaid farmers for a long time as a cart track to transport the agricultural products. The third respondent, after inspecting the site jointly with the officials of other departments, has passed the order dated 18.12.2017 and it



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does not call for any interference by this Court. The respondents 5 and 6 therefore prayed for dismissal of the writ petition.

7. We have heard the learned counsel for the petitioner as well as the learned Special Government Pleader appearing for the respondents 1 to 4 and perused the materials placed on record.

8. The vehement contention of the petitioner is that the water canal namely Kalingarayan Channel comprised in the land in Survey No. 61/9 in Kurukkapalayam Village has been encroached upon by the respondents 5 and 6 and they are attempting to convert it into a pathway. By virtue of such attempt on the part of the respondents 5 and 6, it is stated that the free flow of water in the canal has been affected and the petitioner and others in his village could not get water for irrigation. This contention of the petitioner has been denied by the third respondent in the impugned order dated 18.12.2017. The order dated 18.12.2017 has been passed after carrying out a site inspection. It was specifically stated in the order dated 18.12.2017 that the cart track is in existence for a long time and it is being used by the farmers in the locality, including the respondents 5 and 6 for transporting the agricultural produce. It is further stated that the pathway is used for a common cause by all the farmers



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and it cannot be regarded as an encroachment and therefore the question of eviction does not arise. In this context, it is relevant to refer to the counter affidavit of the third respondent, wherein it is stated as follows:-

"15. (3) Further the joint inspection report dated 08.11.2017 conducted by officials of Revenue, WRD and Agricultural Engineering has clearly exhibited that the farmers of that area has no other access to their lands nearby except the cart track now used by them and this pathway is being used by the farmers for the common purpose of cart track and due to this usage no hindrances were found either for the free flow of water or for the structures of canal and filed bothie. Further they have opined that the usage of the present field bothie constructed by the Agricultural Engineering Department in RS No.61/9 of Kurukkalpalayam village and the pathway in the vaikkal poromboke land in RS.No.61/9 be continued as is at present now.

(4) Based on the above said reports and personal inspection of the suit property by the third respondent and in the strength of the facts observed during the enquiry made with the 5th and 6th respondents the third respondent, in good faith, with no prejudice, have issued the order No. F507/2017/Executive Engineer, WRD/Dated 18.12.2017.

(5) The portion of land in R.S. No. 61/9 is used as cart track by all the farmers of that area including the 5th and 6th respondents do not have any specific right on the pathway except it can be used by them for passing to their lands and in over all the pathway is used for a common cause by all the farmers, such common usage cannot be considered as encroachment and hence the question of eviction does not arise.

9. In the light of the above facts, we are of the view that the pathway in the land in Survey No. 61/9 cannot be construed as an encroachment warranting us to issue a direction for its removal. When there is no encroachment at all, as alleged by the petitioner, the question of issuing a



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direction to remove such encroachment will not arise. Therefore, recording the statement of the third respondent in the counter affidavit, the writ petition stands closed. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D., J.] [M.S.Q., J.]
01.02.2023

Index : Yes / No

Internet : Yes / No

av/rsh

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