



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.08.2023

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CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P(MD)No.13818 of 2013
and
M.P(MD)No.2 of 2013

M.A.Joe

... Petitioner

-VS-

1. The Commissioner of Land Administration
/ The Principal Secretary,
Land Administration Department,
Chepauk,
Chennai-600 005.

2. The District Collector,
Kanyakumari District,
Nagercoil.

3. D.Roselet Anitha ... Respondents
(R3 is impleaded vide order dated 22.08.2023 in WMP(MD)No.
16957 of 2017)

PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 1st respondent herein in his proceedings in Lr.No.T2/32141/2010 dated 30.07.2012 and quash the same and further direct the 1st Respondent herein to take the petitioner's appeal dated 21.09.2010 on his file and dispose the same within the time stipulated by this Court.



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For Petitioner	: Mr.D.Nallathambi
For R1 & R2	: Mr.J.Ashok
	Additional Government Pleader
For R3	: Mr.N.S.Ramakrishnadass

ORDER

[Order of the Court was made by S.S.SUNDAR, J.]

This writ petition is for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 1st respondent herein in his proceedings in Lr.No.T2/32141/2010 dated 30.07.2012 and quash the same and further direct the 1st respondent herein to take the petitioner's appeal dated 21.09.2010 on his file and dispose the same within a time frame.

2. Brief facts that are necessary for disposal of this writ petition are as follows:-

The petitioner claims to be the owner of the lands measuring about 7 acres comprised in Survey Nos.66/1, 66/2, 67, 68/1, 68/2 and 69/1 in Alagiyapandiyapuram Village, Thovalai Taluk, Kanyakumari District. It is the case of the petitioner that he got patta in respect of the said lands from the competent authorities and is in possession and enjoyment of the aforesaid lands. It is admitted that the 2nd respondent/District Collector pursuant to



the direction of this Court in W.P(MD)No.5106 of 2010 dated 16.04.2010, has passed an order dated 11.06.2010 directing the petitioner herein to restore the wall removed by him in the bank of the water stream runs through his lands. The allegation against the petitioner is that he had demolished the structure which was meant to protect the water stream. It is also admitted by the petitioner that the 3rd respondent filed a writ petition in W.P(MD)No.1155 of 2011 before this Court for issuing a Mandamus, directing the 2nd respondent District Collector to implement his earlier order vide his proceedings in Na.Ka.M2/16865/2010 dated 11.06.2010 and for a consequential direction to the District Collector to restore the water channel flow in north to south direction situate in Alegiyapandiyapuram Village, Thovalai Taluk, Kanyakumari District. Unfortunately, the said writ petition was dismissed since the appeal filed by the petitioner herein against the said order dated 11.06.2010 was pending, however, liberty preserved to the petitioner therein to file a fresh writ petition after the disposal of the aforesaid appeal filed by the petitioner herein. It is admitted that the petitioner herein filed a revision under Section 10A of the Tamil Nadu Land Encroachment Act, 1905, by misconstruing the order dated 11.06.2010 of the 2nd respondent/District Collector as one passed under Section 10 of the Tamil Nadu Land Encroachment Act, 1905 and the 1st



respondent/Principal Secretary and Commissioner of Land Administration, Chennai, has disposed of the aforesaid revision petition filed by the petitioner as time barred, holding that as per the Tamil Nadu Land Encroachment Act, 1905, an appeal or revision against the order of the District Collector shall lie before him within a period of thirty days from the date of receipt of the Collector's order, whereas, in the instant case, the appeal petition has been preferred after a delay of 260 days. It is against the said order, this writ petition is filed.

3. The learned counsel appearing for the petitioner submits that the petitioner was not given any opportunity of being heard by the 1st respondent before passing the impugned order. Since the impugned order has not been passed on merits, but only on the ground that the appeal/revision filed by the petitioner is time barred, the learned counsel submitted that the petitioner is entitled to file an appeal on satisfying the 1st respondent with sufficient reasons for the delay. Referring to Section 11(4) of the Tamil Nadu Land Encroachment Act, 1905, which enables the 1st respondent to condone the delay, the counsel for the petitioner would further submit that since the appeal/revision of the petitioner has been disposed of by the impugned order without considering the case of the petitioner on merits, the impugned



order is liable to be set aside on the ground of violation of principles of natural justice. Though the petitioner has raised several grounds attacking the impugned order, the main ground is that the petitioner is deprived of an opportunity to put forth his case on merits.

4. In the counter affidavit filed by the 2nd respondent/District Collector, it is specifically stated that though it is admitted that the petitioner is having patta in respect of the lands in the aforesaid survey numbers, the petitioner has no right to alter the flow of water stream runs through his patta lands. It is stated that he is under an obligation to maintain the wall of the stream and its normal course.

5. This Court finds no merit in any of the contentions of the petitioner for the following reasons:-

The petitioner claims ownership over 7 acres of land comprised in Survey Nos.66/1, 66/2, 67, 68/1, 68/2 and 69/1 in Alagiyapandiyapuram Village, Thovalai Taluk, Kanyakumari District. The possession of the petitioner in the aforesaid 7 acres of lands is not seriously disputed by the respondents. The existence of water stream which runs through the petitioner's patta lands is not disputed by the petitioner in any of his grounds.



The water stream/channel or waterbody is always a communal land and hence that does not go with the private patta lands through which it runs. In other words, every water channel/stream or waterbody or its bunds are properties of the Government which vests with the Government under any of the legislations namely, the Tamil Nadu Estates (Abolition and Conversion Into Ryotwari) Act 1948 (Act 26 of 1948), The Tamil Nadu Inam Estates [Abolition and Conversion into Ryotwari] Act, 1963 [Act 26 of 1963] and The Tamil Nadu Minor Inams [Abolition and Conversion into Ryotwari] Act, 1963 [Act 30 of 1963]. In such circumstances, the petitioner who is not entitled to claim any proprietary rights in respect of the water stream runs through his patta lands, cannot alter the structure of the same made by the Government. It is in that sense, the petitioner's unlawful act of removal of the wall in the water stream was condemned and he was directed to restore the wall by the District Collector. The petitioner who is the owner of patta lands through which the water stream is running, is under legal obligation not to interfere with its course. The petitioner cannot agitate when a direction is issued to him to restore the wall of the water stream which has been obliterated by him. In the absence of any factual disputes raised by the petitioner denying the existence of water stream with wall protecting the stream and its course in his patta lands, the



damage caused to the wall by him and the obliteration of the bund of the water stream, this Court is unable to find any merits in the writ petition. Merely because the water stream runs through the patta lands of the petitioner, that does not mean that the pattadhar namely, the petitioner can have exclusive control or claim over the water stream and its wall which exclusively vest with the Government.

6. In view of the above, the Writ Petition is dismissed. No costs. Connected miscellaneous petition is closed.

[S.S.S.R, J.] [D.B.C., J.]
22.08.2023

Index : Yes / No
Neutral Citation : Yes / No
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