



W.P(MD)No.10711 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 16.11.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.10711 of 2023

K.Suresh

... Petitioner

Vs.

- 1.The Director General,
Department of National Highways,
No.76, Sardar Patel Road,
Guindy, Chennai – 25.
- 2.The District Collector,
District Collector Office,
Kanyakumari District.
- 3.The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
No.318/46A, Water Tank Road,
Nagercoil,
Kanyakumari District – 629 001.
- 4.The Municipal Commissioner,
Padmanabapuram Municipality,
Palace Road, Thuckalay,
Kanyakumari District.



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5.The Tahsildar,
Kalkulam Village,
Thuckalay,
Kanyakumari District.

6.L.A.Kumaraswamidhas

7.Dharmaraj

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondent officials to close the artificial pond created in R.S.No.C9/14/1 and C9/14/6 in Puliyurkurichi, Near Alagaramman Koil, Kalkulam Village and Taluk by considering the petitioner's representation dated 04.07.2022.

For Petitioner : Ms.G.Keerthana

For Respondents : Mr.M.Prakash
Additional Government Pleader
for R.1, R.2 & R.5

Ms.Vijayakumari Natarajan for R.3

Mr.P.Athimoola Pandian for R.4

Mr.G.Ramanathan for R.6 & R.7

ORDER

Heard both sides.



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2. The writ petitioner is the paternal uncle of the sixth respondent.

His grievance is that the sixth respondent had dug an artificial pond in the petition mentioned survey number and he wants this Court to direct the authorities to close the same.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. She placed reliance on the relevant provisions in the Tamil Nadu Minor Mineral Concession Rules, 1959. She also drew my attention to the communications issued by the Highways Department. She asserted that location of the pond is dangerously close to the highways and as a result of the creation of the pond, a common pathway had also been completely undermined. She called upon this Court to grant relief as prayed for.

4. The private respondents have filed counter affidavit and the learned counsel appearing for them took me through its contents.



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5. I am more than satisfied that the issue projected in this writ petition is a pure private dispute between the writ petitioner on the one hand and the private respondents on the other. Reliance on the Tamil Nadu Minor Mineral Concession Rules, 1959 is misplaced in this case. The private respondents have not applied to the authorities for transporting any mineral from their patta land. What has been dug in their patta land is an artificial pond meant for irrigation purposes. If the location of the pond has any safety implications, it is for the authorities to take note of the same and initiate action. If the petitioner's pathway right is affected, the petitioner can work it out in the pending civil proceedings. I do not want to issue any Mandamus at the instance of the writ petitioner in this writ petition.

6. Leaving open the other rights and remedies of the writ petitioner, this writ petition is dismissed. There shall be no order as to costs.

16.11.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
MGA

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G.R.SWAMINATHAN, J.

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