



W.P(MD)Nos.19501, 19457 to 19460 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.07.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)Nos.19501, 19457 to 19460 of 2014

and

M.P(MD)Nos.1 1, 1, 1, 1 & 2 of 2014

and W.M.P(MD)No.15827 of 2016

W.P(MD)No.19501 of 2014:

A.Ponnuchamy

... Petitioner

Vs

1.The District Collector,
Madurai District,
Madurai.

2.The Tahsildar,
Melur Taluk,
Melur,
Madurai District.

3.The President,
Kattanipatti Panchayat,
Sivagangai Panchayat Union,
Sivagangai District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorari, to call for the records relating to the



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proceedings of the impugned order in Na.Ka.No.Je3/29154/2009 dated 01.07.2014 on the file of the first respondent and quash the same.

For Petitioner : Mr.G.Prabhu Rajadurai

For Respondents : Mr.D.Gandhiraj
Special Government Pleader
for R.1 & R.2

Mr.C.Selvaraj for R.3

W.P(MD)No.19457 of 2014:

M.Muthukannu

... Petitioner

Vs

1.The District Collector,
Madurai District,
Madurai.

2.The Tahsildar,
Melur Taluk,
Melur,
Madurai District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, forbearing the respondents from interfering with the cultivation of the petitioner's land in Survey Nos. 708/3 and 708/4, Soorathurpatti, Uranganpatti Panchayat, Melur Taluk, Madurai District.

For Petitioner : Mr.G.Prabhu Rajadurai



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For Respondents : Mr.D.Gandhiraj
Special Government Pleader

W.P(MD)No.19458 of 2014:

N.Veeranan

... Petitioner

Vs

1.The District Collector,
Madurai District,
Madurai.

2.The Tahsildar,
Melur Taluk,
Melur,
Madurai District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, forbearing the respondents from interfering with the cultivation of the petitioner's land in Survey Nos. 15/9, Soorathurpatti, Uranganpatti Panchayat, Melur Taluk, Madurai District.

For Petitioner : Mr.G.Prabhu Rajadurai

For Respondents : Mr.D.Gandhiraj
Special Government Pleader

W.P(MD)No.19459 of 2014:

C.Sonaimuthu

... Petitioner



W.P(MD)Nos.19501, 19457 to 19460 of 2014

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Vs

1.The District Collector,
Madurai District,
Madurai.

2.The Tahsildar,
Melur Taluk,
Melur,
Madurai District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, forbearing the respondents from interfering with the cultivation of the petitioner's land in Survey Nos. 708/5, Soorathurpatti, Uranganpatti Panchayat, Melur Taluk, Madurai District.

For Petitioner : Mr.G.Prabhu Rajadurai

For Respondents : Mr.D.Gandhiraj
Special Government Pleader

W.P(MD)No.19460 of 2014:

P.Andiappan

... Petitioner

Vs

1.The District Collector,
Madurai District,
Madurai.



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2.The Tahsildar,
Melur Taluk,
Melur,
Madurai District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, forbearing the respondents from interfering with the cultivation of the petitioner's land in Survey Nos. 15/9, Soorathurpatti, Uranganpatti Panchayat, Melur Taluk, Madurai District.

For Petitioner : Mr.G.Prabhu Rajadurai

For Respondents : Mr.D.Gandhiraj
Special Government Pleader

COMMON ORDER

Since the issue involved in all these writ petitions is one and the same, they are being taken up together and dispose of by common order.

2. The District Collector, Madurai had passed order dated 01.07.2014 for restoration of cart track that is shown as running through the petition mentioned lands in the revenue record and for removal of the encroachments. The said order has been challenged in W.P(MD)No.19501 of 2014. The other writ petitions have been filed in the nature of Writ of Mandamus.



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3. The learned counsel appearing for the petitioners reiterated all the contentions set out in the affidavit filed in support of the writ petitions. He pointed out that the petitioners are successors-in-interest of the original assignees. Though it is true that in FMB, a “detail mark” is shown as running across the petition mentioned survey numbers, on ground no such cart track is in existence atleast for the last fifty years. The petitioners are engaged in agricultural activities. His prime contention is that the Government had laid pucca tar road and therefore nobody's right of access is affected. He called upon this Court to interfere in favour of the petitioners.

4. The third respondent at whose instance the impugned order came to be passed has filed a detailed counter affidavit and the learned Special Government Pleader took me through its contents.

5. The stand of the respondents is that when the revenue record indicates that a cart track was running on ground as shown by the detail mark, it has to be maintained as such forever and neither the pattadhar nor the authority will have the power to obliterate or alter the same. Reliance is placed on the decisions of the Hon'ble Division Bench made in W.P(MD)No.27153 of 2016 (J.Jagadesh Vs The Tahsildar & Another) dated 25.01.2016 and order dated 06.02.2018 in



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W.P.No.30187 of 2017 (S.P.Rajamani Vs The State of Tamil Nadu & Others).

Emphasis was placed on RSO.26.15 which reads as follows:

“RSO.26.15. Encroachments on plan marked details: A plan marked channel or pathway running in a patta land is a Government land. Eviction of encroachments in such lands need be invoked only in cases where the encroacher has interfered with the plan marked detail so as to close its entrance to an exit from his lands. In the case of pathways and cart tracks which have been used by the general public till recently, the ryot should not be allowed to shift the course of the details to suit his own convenience. However, such diversions of plan marked channel from its original course, with a view to consolidate his holding or to facilitate irrigation of the portions which would be otherwise severed need not be treated as a encroachment.”

6. The learned Special Government Pleader submitted that the impugned order passed by the District Collector is in consonance with the RSO and that therefore no interference is warranted. He pressed for dismissal of the writ petition.

7. I carefully considered the rival contentions and went through the materials on record.



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8. It is not as if that the Court is seized of the matter for the first time. The jurisdictional Tahsildar had earlier passed order dated 12.02.2019 based on the instruction of the District Collector given on 19.01.2009. It was put to challenge by Thiru.A.Ponnusamy in W.P(MD)Nos.2842 to 2844 of 2009. It was taken up along with two other writ petitions which were filed for restoration of the cart track. On 18.01.2011, this Court set aside the aforesaid orders. Paragraphs 20 and 21 of the order passed by this Court read as follows:

“20.Since the earlier proceedings dated 19.01.2009 was passed without notice to the petitioners or furnishing a copy of the report stated to have been submitted by the revenue officials, the said proceedings cannot be relied on to pass the consequential order. The order of eviction passed by the District Collector in a parallel proceedings cannot be given effect to and that too by evicting the petitioners from the said properties. The District Collector has formed an opinion on the basis of the report submitted by the subordinate revenue officials that the petitioners have encroached into the property. If that was the case, necessarily the petitioners should have been heard by the District Collector. In any case, the report of the Tahsildar, should have been heard by the District Collector. In any case, the report of the Tahsildar should have been given to the petitioners before passing the order dated 19.01.2009.



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Therefore, the issue requires fresh consideration by the District Collector. Since the impugned order dated 12.02.2009 was passed only on the basis of the proceedings dated 19.01.2009 necessarily the principal order should also be set aside so as to enable the District Collector to consider the matter afresh.

21. Accordingly, the impugned order dated 12.02.2009 is set aside along with the earlier proceedings dated 19.01.2009 and the matter is remitted to the District Collector, Madurai for fresh consideration. The District Collector is directed to issue notice to the petitioners and the third respondent and pass appropriate orders on merits and as per law, after considering the objections and giving an opportunity of hearing. The interim order of status quo granted by this Court on 08.04.2009 would be in operation till the disposal of the matter by the District Collector.”

The operative portion of the impugned order reads as follows: --

எனவே, சென்னை உயர்நீதிமன்றம் மதுரை கிளை வழக்கு W.P(MD) எண்.2842 முதல் 2844/2009 மற்றும் 3100/2009 தீர்ப்பு நாள்:18.01.2011ல் வழங்கிய உத்தரவின்படி சம்பந்தப்பட்ட நபர்களை விசாரணை செய்யப்பட்டதின் பேரிலும், ஆவணங்களின் அடிப்படையிலும், மேற்படி புலங்களில் உள்ள வண்டிப்பாதை ஆக்கிரமிப்புகளை அகற்றி, அழிக்கப்பட்டுள்ள வண்டிப்பாதையை புலச்சுவடியில் உள்ள விளக்கியின்படி (Details) மீண்டும் ஏற்படுத்த, சென்னை உயர்நீதிமன்ற மதுரை கிளை W.P(MD) எண்.9841/2008 வழக்கின் தீர்ப்பு நாள்:04.12.2008-ன் படி மாவட்ட ஆட்சித்தலைவரால் விசாரணை செய்யப்பட்டு மாவட்ட ஆட்சியர் அலுவலக கோப்பு எண்.ஜே3/105330/2008 நாள்:19.01.2009 அன்றைய உத்தரவின்படி மேலூர் வட்டாட்சியருக்கு உத்திரவிடப்பட்டதை அறிந்தும் செய்து இதன் மூலம் உத்தரவிடப்படுகிறது.



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It can be seen from the above that what was quashed by this Court has been affirmed by the District Collector, Madurai. This perspective may sound technical but this Court is essentially concerned with the fairness of the decision making process. When this Court had set aside the earlier order dated 19.01.2019 issued by the District Collector consequent to which the jurisdictional Tahsildar passed the order dated 12.02.2009, it should not have been taken into account at all. Otherwise, this Court can only come to the conclusion that the authority was swayed by the proceedings that had been set aside by this Court. A decision is vitiated if irrelevant aspects are taken into account. The case on hand is one such.

9. The learned counsel for the petitioner raised an important submission. While it is true that FMB indicates the existence of cart track in the form of detail mark, on ground it was never in existence. He substantiates his contentions by drawing my attention to the assignment proceedings. Column No.12 of the Yathasthu is as follows:

“12.(1) வழி நடை பாத்தியதை அவசியமா?

(2)நிலத்தின் மூலமாயாவது சமீபமாயாவது ராஸ்தாவோ,

நீர்ப்பாய்ச்சலுக்குரிய கட்டுவேலையின் கரையோ

கரையில்லாத கால்வாயோ அல்லர் ஓடையோ

போகிறதா? அப்படி போகுமானால் எவ்வளவு

விஸ்தீர்ணத்தை கழிக்க வேண்டும்?”



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The entry “No” was made. From this one can note that assignments were made to the predecessors-in-interest without there being any cart track running across. The decisions relied on by the learned Special Government Pleader are to the effect that if a “nilavial paathai” had been running across the patta land, public had right to pass across and that pattadhar cannot have any claim thereon. In the case on hand, the contention is when assignment was made it was given as a single piece without any cart track running across.

10. The Tahsildar, Melur after conducting inspection submitted report dated 05.11.2012 stating that since Thar roads had been laid from Saruguvalaiyapatti to Kattanipatti noone's right will be affected if the subject cart track is not restored. The purpose of having a cart track is to ensure access rights. If it can be better served by a thar road there is no need to insist that what was originally shown in the revenue record must now be restored. In fact, the question is not restoration but laying a cart-track as per the 'detail marks' in the FMB.

11. Such laying of the cart track will certainly have an adverse impact on the agricultural activities of the petitioners herein. In matters such as this, the authority must apply the balancing test. In this case such an approach was



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not adopted. Though in the impugned order, there is a reference to the report of the Tahsildar dated 05.11.2012, there has been no effective consideration of the same. The order dated 01.07.2014 passed by the District Collector, Madurai is set aside for the forgoing reasons. If the District Collector, Madurai proposes to revisit the issue, notice will have to be issued to all the stakeholders and appropriate order shall be passed.

12. These writ petitions are allowed on these terms. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

13.07.2023

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

To

- 1.The Superintending Engineer,
Public Works Department,
Sarugani River North – Sub Division,
Manamadurai,
Sivagangai District.
- 2.The Assistant Superintending Engineer,
Public Works Department,
Virahanoor Dam Regulator Section Office,
Virahanoor,
Madurai District.



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3. The Executive Engineer,
Public Works Department,
Sarukani Water Resource,
Sivagangai.
4. The Assistant Engineer,
Public Works Department,
Virahanoor Regulator Section,
Virahanoor,
Madurai District.



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G.R.SWAMINATHAN, J.

MGA

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