



W.P(MD)No.13753 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.09.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.13753 of 2015

and

M.P(MD)Nos.1 to 3 of 2015

K.Santhi

... Petitioner

Vs

1.The Tahsildar,
Palani Taluk,
Dindigul District.

2.The Panchayat President,
Vilvathampatti Panchayat,
Palani, Dindigul District.

3.T.Kanniammal

...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 of the second respondent's proceeding in U.Letter.No.5 dated 13.07.2015 and quash the same.

For Petitioner : A.Sivaji

For Respondents : Mr.N.GA.Natraj
Government Advocate for R.1



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Mr.Aayiram.K.Selvakumar
for R.2 & R.3

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ORDER

Heard the learned counsel on either side.

2. The petitioner obtained permission from the Tahsildar, Palani Taluk on 20.11.2013 for laying pipeline through certain survey numbers for taking water from one survey number to another survey number. The stand of the second respondent is that the pipeline is running across Panchayat roads also. The second respondent has therefore issued the impugned communication calling upon the petitioner to offer her explanation failing which action will be taken for removing the pipelines laid by the petitioner. Challenging the same, this writ petition came to be filed.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. His core argument is that the petitioner has not done anything illegal and that the second respondent out of personal animosity is acting without jurisdiction. He pointed out that the Panchayat President is not the executive authority of the local body and that she has no jurisdiction. He called upon this Court to grant relief as prayed for.



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4. The second respondent has filed counter affidavit. The then Panchayat President has been named in person. The learned Government Advocate appearing for the first respondent and the learned counsel appearing for the respondents 2 and 3 reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to dismiss the writ petition.

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

6. Vide G.O(Ms)No.225 Rural Development Department dated 15.10.1996, the Government of Tamil Nadu notified the President of Village Panchayat as its executive authority. As per Section 125 of the Tamil Nadu Panchayats Acts, 1994, all public roads in a Village Panchayat would vest in the local body. Section 131 of the Act empowers the executive authority, namely, the President of the local body to take action for removal of obstructions in or over the public roads. The stand of the local body in this case is that without the permission of the local body the petitioner laid pipelines underneath public roads that are vested in the local body.



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WEB COPY 7. The public road in question is comprised in part of old Survey No.7.

This survey number is not specifically mentioned in the impugned communication but it is mentioned in the counter affidavit filed by the second respondent. If that be so, the second respondent is very much competent to issue notice under Section 131 of the Act. However, it has been held recently in more than one decision passed by the Hon'ble Division Bench of this Court that while the Panchayat President will have the power and authority to issue notice, physical removal of the encroachment cannot be done by the Panchayat President. The Panchayat President will have to place the proposal before the jurisdictional Tahsildar. The Tahsildar will have to take action under the provisions of the Tamil Nadu Land Encroachment Act, 1905. If according to the second respondent the petitioner has committed any illegality or encroachment, the second respondent is at liberty to place the necessary proposals before the competent authority. As and when such proposals are received from the Panchayat President, the competent authorities are bound to take action as per law. I make it clear that I have not gone into the merits of the matter.



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8. Since I have given a categorical finding that the Panchayat President is having jurisdiction in the matter, with the aforesaid liberty to the second respondent, this writ petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

22.09.2023

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

To

The Tahsildar,
Palani Taluk,
Dindigul District.



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G.R.SWAMINATHAN, J.

MGA

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