



W.P(MD)No.16313 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 16.08.2023

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MR.JUSTICE B.PUGALENDHI**

W.P(MD)No.16313 of 2015
and
M.P.(MD)Nos.1 and 2 of 2015

J.Gnanaolivu

... Petitioner

Vs.

- 1.The District Collector,
Madurai District,
Madurai.
- 2.The Sub Divisional Magistrate Cum
Revenue Divisional Officer,
Madurai, Madurai District.
- 3.The Tahsildar,
Madurai North Taluk,
Collectorate Campus,
Madurai District.
- 4.The Executive Engineer,
Public Works Department/
Water Resource Organization,
Periyar Main Canal Division,
Melur, Madurai District.



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5.The Assistant Engineer,
Public Works Department/
Water Resource Organization,
Periyar Main Canal Division,
Mettupatti, Madurai District.

6.B.Atheeswari ... Respondents
*(R6 is impleaded vide order dated 14.07.2023
in W.M.P.(MD)No.18210 of 2022 in W.P.
(MD)No.16313 of 2015 by GRSJ & BPJ)*

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned letter issued by the 5th respondent Assistant Engineer in Letter No.Ko.16/UP/Mettupatty dated 25.08.2015 quash the same further direct the respondents to forbear from demolishing or interfering with the compound wall existing over the past 47 years at Survey No.113/2 in the peaceful possession of petitioner.

For Petitioner : Mr.K.Ragatheesh Kumar,

For Respondents : Mr.K.Balasubramani,
Spl. Government Pleader for R1 to R5.
Ms.H.Jasime Yasmin,
For M/s.Ajmal Associates.

ORDER

Heard both sides.



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2.The petitioner is carrying on rice mill business. His father had put up the construction. It is specifically alleged by the sixth respondent that part of the construction is on a water channel. It is also stated that as a result, there has been water-logging and causing of nuisance to the sixth respondent. The complaint of the sixth respondent was taken cognizance and proceedings were initiated. The Executive Magistrate passed order under Section 133 of Cr.P.C., 1973. That was put to challenge in CrI.O.P.(MD)No.7583 of 2013. The petitioner also filed quite a few other writ petition on the same cause of action. O.S.No.144 of 2009 on the file of District Munsif Court, Melur filed by the petitioner was dismissed for non-prosecution.

3.We have gone through the report of the Advocate Commissioner filed in CrI.O.P.(MD)No.7583 of 2013. We are more than satisfied and it is also not disputed that the petitioner's father had put up construction right on the “odai”. The extent of the encroachment is quite substantial. The Advocate Commissioner report states that at the beginning of the water channel in S.No.113/2, the compound was constructed beyond 1.8



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meter from the boundary of the water channel, 0.4 meter in the centre and 0.9 meter at the back side. The total encroachment measures 0.2.5 hectares. The authorities have rightly issued the impugned communication. Since the facts are unimpeachable, the fifth respondent issued the impugned communication to the petitioner informing him that the encroachment will be removed on 09.09.2015. Because of the pendency of this writ petition, for the last 8 years, the encroachment could not be removed. The issue can brook no further delay. The learned counsel for the petitioner made an offer that the petitioner is willing to offer lands in exchange in lieu of the encroached portion. This request cannot be accepted. A water body should always be maintained as water body. It is settled that the natural course of a water channel cannot be altered or deviated. Therefore, the order impugned in this writ petition is sustained and the writ petition is dismissed. We however give four weeks time from today to the petitioner to remove the encroachment on his own. If at the end of the four weeks from today the encroachment is still not removed, the official respondents are directed to remove the encroachment on their own without issuance of any further notice. The learned counsel for the petitioner makes a statement that the sixth



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respondent has also made encroachment on the very same odai. The learned counsel for the sixth respondent states that the sixth respondent will clear the said encroachment on her own. No costs. Consequently, connected miscellaneous petitions are closed.

(G.R.S.J.) & (B.P.J.)
16.08.2023

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