



W.P(MD)No.23137 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :19.07.2023

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THE HONOURABLE MR.JUSTICE P.DHANABAL

W.P(MD)No.23137 of 2017
and
W.M.P(MD) No.19443 of 2017

R.Kanagam

... Petitioner

-Vs-

1. The Tahsildhar
Vadipatti Taluk, Vadipattim
Madurai.

2. The Sub Inspector of Police
Vadipatti Police Station,
Vadipatti, Madurai.

3. S.Rajaram

... Respondents

PRAYER:- Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent in respect of the impugned order passed by him under his proceedings No.Na.Ka.No.Aa3/425/2017(ந.க.எண்.ஆ3/425/2017) dated 30.11.2017 and quash the same as illegal, ultra virus, Arbitrary, malafide and not valid in law and in consequence direct the first respondent to convene a fresh peace committee meeting in respect of the report given by the second respondent dated 28.11.2017 after giving due notice to me in respect of the petitioner's land comprised in S.No.158/10, Vadugapatti



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village, Thanichiyam, Vadipatti Taluk, Madurai District and also providing an opportunity of being heard within a time frame has been fixed by this Court.

For Petitioner	: Mr.M.Ponniah
For R1 & R2	: Mr. R.M.Anbunithi Additional Public Prosecutor
For R3	: Mr. M. Viji

ORDER

This Writ Petition has been filed to quash the impugned order passed by the first respondent under his proceedings No.Na.Ka.No.Aa3/425/2017(ந.க.எண்.ஆ3/425/2014) dated 30.11.2017 and direct the first respondent to convene a fresh peace committee meeting in respect of the report given by the second respondent dated 28.11.2017 after giving due notice to the petitioner in respect of the land comprised in S.No.158/10, Vadugapatti village, Thanichiyam, Vadipatti Taluk, Madurai District and also providing an opportunity of being heard within a time frame that may be fixed by this Court.

2. According to the petitioner the disputed property belongs to the petitioner by virtue of sale deed dated 03.04.1982. From the date of sale deed itself he has been in possession over the property. On



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23.03.2001 he executed Varthaman deed in favour of one Kokila as such they are in possession and enjoyment over the property. The third respondent is the adjacent land owner and having land on the western side of the petitioner's land and now the same was converted into plots. While converting to plots the channel was wipe out. That apart there is a common pathway which which connected the burial ground on the adjacent western side of his land. The petitioner has been getting water from Periyar- Vaigai irrigation channel for time immemorial. However the third respondent never get water from this channel on the other hand he got water from the channel runs from Northwest to Southeast which connects the land of the third respondent on the western side. The third respondent approached the petitioners for digging up new channel in the patta land of the petitioner on the northern side and western side inorder to get water to his land in S.No.155. But the said request was refused. Hence a false complaint was lodged by the third respondent before the second respondent and he referred the matter without enquiry to the first respondent to convene peace committee meeting but the petitioner was not given notice though he is a affected party. Order copy was also not served to the petitioner and the second respondent only gave a xerox copy. Hence the order passed by the second respondent is liable to be quashed.



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3. The learned counsel appearing for the petitioner contended that without giving opportunity to the petitioner the first respondent has passed the order and there is no such channel existing in the disputed land, without considering the same, the first respondent has passed the order. Infact the third respondent attempted to create new channel for that this petitioner refused to give consent in their patta lands, however he filed the petition before the second respondent and the same was forwarded to the first respondent and he without any jurisdiction passed prohibitory order.

4. The learned Additional Public Prosecutor appearing for the respondents 1 and 2 would submit that based on the request of one Rajaram, who is the third respondent herein the first respondent after hearing both parties has passed the impugned order.

5. The learned counsel appearing for the third respondent contended that the channel was in existence for the past 30 years and now the petitioner is preventing to take water through this channel. Thereby the third respondent filed petition before the second respondent and the first respondent has passed impugned order after hearing both parties, hence this petition is liable to be dismissed..



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6. Heard both sides and perused the materials available on record.

7. On perusal of the records, it is observed that the first respondent has passed order dated 30.11.2017 by stating that he issued notice to both parties and then passed order, but there is no mention in the order under what capacity he has passed the order. The first respondent passed the order restraining the petitioner from causing any disturbance to take water through the disputed property. The first respondent without mentioning under which act he has passed the above order vaguely passed order restraining the petitioner from interfering with the third respondent who has to take water through disputed channel without referring under which Act has passed the order. He cannot pass such order and the same is not permissible under law. Further the contention of the petitioner is that without hearing the petitioner the impugned order was passed. On careful perusal of the impugned order it reveals that no mention about the service of copy of the order to the petitioner. Therefore on the face of record it reveals that the first respondent exceeded his limits and passed the impugned order, therefore the order passed by the first respondent is liable to be quashed.



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8. Accordingly this Writ Petition is allowed and the order passed by the first respondent is hereby set aside. No costs. Consequently connected miscellaneous petition is closed.

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Index : Yes/No
Internet : Yes/No
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Vadipatti Police Station,
Vadipatti, Madurai.
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Madurai Bench of Madras High Court,
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P.DHANABAL, J.

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