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W.P.No.12828 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2024

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.8529 of 2024
and
WMP.Nos.9471 & 9473 of 2024

S.Arunkumar

...Petitioner

Vs

1. District Collector
Erode District.

2. Assistant Director of Town Panchayat
3rd Floor, District Collector Office Complex,
Erode District.

3. Executive Officer,
Kasipalayam Town Panchayat,
Gopichettipalayam Taluk, Erode.

4. The Tahsildar,
Gopichettipalayam Taluk, Erode.

5. The Head Surveyor,
Gopichettipalaayam Taluk, Erode.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, forbearing the respondents, men, agents, servants or any other persons claiming through them from in any



W.P.No.12828 of 2024

way disturbing the peaceful possession and enjoyment of the agricultural land of the petitioner in Survey No.350/3, Thadapalli Village, Gobi Taluk, Erode District, without following due process of law.

For Petitioner : Mr.E.P.Senniyangiri

For Respondents : Mr.A.M.Ayyadurai for R1, R2, R4 & R5
Mr.Abishek Murthy for R3

ORDER

By consent of both parties, this writ petition is taken up for final disposal at the stage of admission itself.

2. This Writ Petition has been filed seeking a direction forbearing the respondents, men, agents, servants or any other persons claiming through them from in any way disturbing the peaceful possession and enjoyment of the agricultural land of the petitioner in Survey No.350/3, Thadapalli Village, Gobi Taluk, Erode District, without following due process of law.

3.The case of the petitioner is that the petitioner is the owner of the land located in S.No.350/3, Thadapalli Village, Gobi Taluk, Erode District



W.P.No.12828 of 2024

measuring to an extent of 3.11 acres. The patta for the said land stands in the name of his father. Abutting the said land, S.F.No.350/4A is located wherein the Government decided to lay concrete road in the SF.No.350/4A to facilitate the farmers to move their agricultural produce. While so, the 3rd respondent decided to construct drainage alongside of the concrete road, by encroaching the petitioner's patta land in S.F.No.350/3. The grievances of the petitioner is that the proposed drainage to be constructed would cause harm not only to the petitioner but also to the other farmers, The contaminated water comes in the drainage will be stagnated in the petitioner's patta land and there is no continuation for the drainage since the jurisdiction of adjacent panchayat starts. While so, on 20.05.2022, the petitioner gave a representation to the 3rd respondent. Thereafter he gave a representation to the respondents 1 and 2 on 24.08.2022. He has also sent a reminder dated 26.10.2022 for which there is no response. The Joint Secretary of the Municipal Administration and Water Supply Department by his letter dated 30.02.2022 addressed to the Director of Town Panchayat informed to initiate action on the issue. Again, he has sent a representation dated 05.10.2023 to the Chief Minister Special Cell and the same was



W.P.No.12828 of 2024

WEB COPY

forwarded to the 3rd respondent through the 2nd respondent. The 2nd respondent by his letter dated 19.10.2023 had addressed to the 3rd respondent directing him to initiate appropriate action on the issue which caused spot inspection and they ascertain the fact as mentioned by the petitioner. Thereafter, by his letter dated 21.11.2023, the 3rd respondent, informed that in the Ward 15 concrete road was being laid under the Kalaingar Rural Development Scheme for the year 2023-2024 and further assured that the concrete road works will be carried out in such a manner that the drainage water not enter into the petitioner's land. In spite of the aforesaid assurance, the 3rd respondent is attempting to construct drainage alongside of the patta land by encroaching the patta land of the petitioner. Pursuant to the same, he also made an application for surveying of land on 09.02.2024 and paid necessary fees. Despite these ongoing problems, the respondents 4 and 5 have not carry out the survey till date. Hence, this petition.

4. The learned counsel for the petitioner has submitted that the proposed drainage itself coming in the patta land of the petitioner which would amount to serious encroachment on the property right of the



W.P.No.12828 of 2024

WEB COPY

petitioner guaranteed under Article 300-A of Constitution of India. Hence, the petitioner seeks a direction to the respondents to forbear the respondents from constructing the said drainage.

5. The learned counsel appearing for the 3rd respondent submitted that the land in S.No.350/3 Thadapalli Village Gobi Taluk, Erode, belongs to the petitioner. It is false to state that the said land was used for the purpose of laying road and drainage channel. They were laid in the panchayat land to facilitate the farmers to move their agricultural produce. The proposal for the construction of the drainage channel was only in SR.Nos.412 and 413 and not on the patta land of SF.No.350/3. The said construction does not disturb the petitioner's patta land and it is only for the public purpose. The water from the soakpit will be reusable for agriculture and will not cause pollution to the others land. He further submitted that he sent a letter on 25.03.2024 to the 4th respondent, to conduct a survey on the lands in S.Nos.350/4, 4A, 412/13 which were proposed for the construction of the drainage channel. He also paid the amount on 02.04.2024 for conducting the survey and awaiting the survey of the subject land for laying the drainage channel. However, as



W.P.No.12828 of 2024

of now, the construction of the drainage channel has not commenced.

Further the proposed drainage channel will be laid in S.No.350/4, 4A and 412/13. Thus the petitioner is in no way connected or affected and there is no water stagnation on the petitioner's land due to the proposed construction of the drainage channel. Once the survey has been conducted by the Tahsildar, the 3rd respondent will proceed with the construction. He will consider the case of the petitioner and take action to bring welfare to the public without affecting the interests of the public in the manner known to law. At this juncture, the site plan produced would also show that the petitioner will not be affected.

6. In view of the above discussion, this Court directs the 4th respondent to conduct survey within a period of two weeks from the date of receipt of a copy of this order and after the said survey and identification, the 3rd respondent can proceed with the said proposal for construction of drainage channel as well as laying of the road. If the Tahsildar did not respond to this order, suo-motu. appropriate action to be taken against the Tahsildar for not cooperating with the court



W.P.No.12828 of 2024

WEB COPY

7. With the aforesaid direction, this Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

8. For reporting compliance post the matter on 29.07.2024.

27.06.2024

Index:Yes/No

Speaking order/Non-speaking order

gv

To

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V.BHAVANI SUBBAROYAN,J.



WEB COPY



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