



WEB COPY

W.P.No.10372 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.10372 of 2024
and WMP.No.11363 of 2024

Jayanthi

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Petitioner

vs

District Collector
Tiruvallur Collectorate Office
Tiruvallur District – 602001.

2.The Project Director
District Rural Development Agency (DRDA)
Tiruvallur District – 602001.

3.The Block Development Officer
BDO Office
Kadambathur Post
Tiruvallur District – 602001.

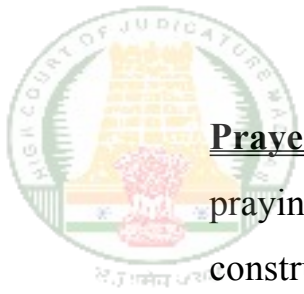
4.The Village President
Pudumavilangai Panchayat
Tiruvallur District – 602001.

5.Divisional Engineer
Highways Department
Tiruvallur Divisional Office
Tiruvallur District – 602001.

6.The Tahsildar
Tiruvallur District – 602001.

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Respondents



Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus to forbear the respondents 1 to 3 from constructing the overhead tank which is being built just in front of petitioner house located in the S.No.233/22 of Kandigai Village, Pudumavillangai, Tiruvallur District.

For Petitioner : Mr.A.L.Franc Paul Asirvadam
For Respondents : Mr.P.Gurunathan, AGP for R1 & R6
Mr.A.M.Ayyadurai, GA for R2
Mr.V.Ravi, Spl.GP for R3 & R4

ORDER

The grievance of the petitioner is that she is residing the S.No.233/22 in Kandigai Village, Pudumavilangai, Tiruvallur District. The existing overtank was constructed 30years back and got damaged. The new over tank under construction is with the capacity of 30,000 litres and which is about 30feet high and it is opposite to the house of the petitioner. The new tank is constructed in the place of Highways Department and the third respondent has not obtained any no objection from the fifth respondent. The second respondent without looking into the above facts, accorded permission to construct new over head tank. The petitioner has also made a representation to the respondents 1 to 4 on 05.12.2022 and the same is



pending without any enquiry and also made another representation on 26.02.2024.

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2. The petitioner had filed suit in OS.No24 of 2024 before the Additional District Munsif, Thiruvallur for the reason that the construction of over head tank is in violation of easmentary rights of the petitioner. Hence, the petitioner filed the present writ petition.

3. The learned Additional Government Pleader for the first respondent filed counter wherein it is stated that free house site pattas have been granted in the year 2001 in respect of the Grazing Ground promboke lands in S.No.231/A and 233, after the grant of above house site assignment these S.Nos have been sub divided and recorded as follows in the village accounts:-

<i>S.No.</i>	<i>Extent (in hectare)</i>	<i>Classification</i>
231/A/1	0.41.0	Grazing Ground
231/A/2 to 26	0.23.0	Village site
233/1	0.03.5	Grazing Ground
233/2	0.23.5	Grazing Ground
233/3 to 33	0.29.5	Village site



The house site in S.No.233/33 which is disputed in this writ petition measuring to an extent of 100sq.mtr (0.01.0 ares) has been allotted to Shanthi w/o.Selvam who is the original house site assignee. The petitioner is not the actual owner of the property and she has no concrete documentary evidence to show that how she derived the property in S.No.233/33 in the manner known to law. The customary pathway is available abutting on southern side of nathan S.No.233/33 and there is no need to use the vacant site in S.No.233/2 as pathway.

4. The District Collector and other respondents obtained administrative sanction for construction of new over head tank under Jal Jeevan Mission Scheme for the benefit of Pudumavilangai Village at the cost of Rs.16.75 lakhs in proceedings RC.No.985460/2023/A11 dated 08.12.2023 in S.No.233/2 classified as Grazing Ground Proamboke and in S.No.334 classified as Battai (Road) Poramboke. The villagers have requested for construction of new over head tank by replacing the old tank which is in dilapidated condition. The new tank work is purely beneficial for the public at large in the village. The petitioner obstructs the construction of new tank with an ulterior motive to encroach the entire land



in S.No.233/2 located in between her land in S.No.233/33 and Battai Poramboke in S.No.334.

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5. It is pertinent to note that the petitioner has encroached upon 70sq.mtr in S.No.233/2 without any documents. For which, the Tahsildar in his proceedings in Na.Ka.No3035/2-24/A3 dated 31.07.2024 called upon the petitioner to appear for an enquiry to be held on 07.08.2024 with all relevant available documents. Hence, the learned counsel prays for dismissal of the writ petition.

6. The learned counsel for the petitioner also filed rejoinder to the counter affidavit filed by the 1st respondent/District Collector wherein it is stated that before constructing any structure in the Meikal Promboke (Grazing Ground) appropriate permission and no objection certificate to be obtained from the Animal Husbandry and Veterinary Science Department under Section 134 of the Panchayat Act 1994.

7. Heard the learned counsel for the petitioner and the learned Additional Government Pleader for R1 7 R6, leaned Government Advocate



for R2 and Special Government Pleader for R3 & R4 and perused the materials produced before this Court.

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8. On perusal of records it is clear that originally the land has been allotted to Shanthi w/o.Selvam who is the original house site assignee. The petitioner is not the actual owner of the property in S.No.233/33. The patta was also allotted in the name of Shanthi and not in the name of the petitioner. The petitioner's land is situated in between the S.No.233/2 classified as Grazing Ground Poramboke and in S.No.334 classified as Battai (Road) Poramboke, the petitioner with an intention to encroach upon the said land obstructs the construction of new tank with an ulterior motive.

9. The suit was also filed by the petitioner in OS.No24 of 2024 before the Additional District Munsif, Thiruvallur for construction of over head tank is in violation of easmentary rights of the petitioner. From the records it is seen the petitioner has already encroached upon 70sq.mtr in S.No.233/2, the Tahsildar in his proceedings in Na.Ka.No3035/2-24/A3 dated 31.07.2024 called upon the petitioner to appear for an enquiry to be held on 07.08.2024 with all relevant available documents to prove her



ownership. The question of easmentary right of the petitioner does not arise herein.

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10. The construction of water tank is based on the representation of the villagers under Jal Jeevan Mission Scheme for the benefit of Pudumavilangai Village at the cost of Rs.16.75 lakhs in proceedings RC.No.985460/2023/A11 dated 08.12.2023 in S.No.233/2 classified as Grazing Ground Proamboke and in S.No.334 classified as Battai (Road) Poramboke. The ultimate beneficiary of the water tank is the villagers at large in the village, the land in S.No.233/2 and S.No.334 belong to the Government. The petitioner has not approached this Court with clean hands and no documents have been produced on the side of the petitioner to show that the land in S.No.233/33 stand in her name and the petitioner has not proved that the original owner Shanthi w/o.Selvam has settled the property in her favour.

11. In view of the above factual position, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

01.08.2024



Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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