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W.P.No.11902 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2024

CORAM

**THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR. JUSTICE K.RAJASEKAR**

W.P.No.11902 of 2020
and
W.M.P.No.14621 of 2020

S.Kanthasamy

... Petitioner

Vs.

1. The District Collector,
Erode District,
Collectorate Buildings,
Erode.

2. The District Revenue Officer,
Erode District Buildings,
Collectorate, Erode.

3. The Revenue Divisional Officer,
Erode Revenue Division Office,
Erode.

4. The Revenue Tashildar,
Perundurai Taluk,
Perunthurai, Erode District.

5. K.Subramani,
Mariammankoil Street,
Papampalayam,
Thingalur, Erode District.

... Respondents



W.P.No.11902 of 2020

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the orders of the 2nd respondent in Na.Ka. No.15474/ 2020/ Vu1 dated 17.08.2020 and to quash the same as illegal, incompetent and ultravires and consequently direct the official respondents to reject the complaint dated 03.07.2020 filed by the 5th respondent and to refrain the official respondents from initiating encroachment proceedings against the petitioner.

For Petitioner : Mr.M.Guruprasad

For Respondents : Mr.A.Selvendran,
Special Government Pleader,
(for R1 to R4);

R5-Not ready in Notice.

ORDER

(Order of the Court was delivered by S.M.Subramaniam J.)

The order passed by the District Revenue Officer, Erode, in proceeding dated 17.08.2020, for removal of encroachment of "Nilaviyal Water Channel" is under challenge in the present writ petition.



W.P.No.11902 of 2020

2. Mr.M.Guruprasad, learned counsel appearing on behalf of the petitioner, would mainly contend that the subject land is a patta land, standing in the name of the petitioner which is not disputed by the Revenue Authorities. However, he relied on R.S.O. 26(15) and said that the petitioner can provide space for water channel by laying pipelines and wall around it. Such procedure has been adopted by many such persons in that locality and therefore, the petitioner cannot be construed as an encroacher. It is contended that the authorities have not considered the revenue records properly and in violation of Clause 26(15) of R.S.O., the petitioner was declared as an encroacher.

3. Perusal of the order impugned reveals that a detailed inquiry was conducted with reference to the village records and revenue records. The statements of Village Administrative Officer, Land Revenue Inspector, Deputy Taluk Surveyor, were obtained and the village accounts were also verified by the District Revenue Officer, Erode. The statements of the officials reveal that as per the village map, Survey No.138/3, Patta No.468 stands in the name of the petitioner. However, it has been shown as "Nilaviyal Water Channel" through which the flow of water reaches to other agricultural lands.



W.P.No.11902 of 2020

4. It is stated that due to the encroachment of the writ petitioner, there is chances of blocking the course of the Nilaviyal Water Channel, not only passing through south western part of Survey No.138/8, but also passing through R.S. No.141(Part), 139(Part), 137(Part), 136(Part), 135(Part) and 134(Part) of Pappampalayam Village, Perundurai Taluk.

5. The authorities found that the obstructions caused by the petitioner would result in serious consequences of blocking of water to other lands in that locality. The village map also clarifies that the area has been marked as “Nilaviyal Water Channel”. Therefore, R.S.O.No. 26(15) is applicable and therefore, the objectionable encroachments are to be removed.

6. R.S.O. No.26(15) unambiguously stipulates as follows:

"Encroachments on plan-marked details:

A plan-marked channel or pathway running in ? patta land is a Government land. Eviction of encroachments in such lands need be invoked only in cases where the encroacher has interfered with the plan marked details so as to close its entrance to and exit from his lands. In the case of pathways and cart tracks which have been used by the public till recently, the ryot should not be allowed to shift the course of the details to suit his



own convenience. However, such diversions of plan marked channel from its original course, with a view to consolidate his holding or to facilitate irrigation of the portions which would be otherwise severed need not be treated as encroachment".

7. The above clause unambiguously stipulates that eviction of encroachments in land marked channel can be done by invoking the provisions of the Tamil Nadu Land Encroachment Act, 1905. A Revenue Standing Order also contemplates that. That being so, the obstructions / encroachments made by the persons in respect of Nilaviyal Water Channel is to be removed. Thus, we do not find any infirmity in respect of the order passed by the District Revenue Officer, Erode, which is impugned.

8. The respondents are directed to remove all the encroachments identified in Nilaviyal Water Channel and ensure free flow of water for the benefit of the people and farmers of the entire locality. The said exercise is directed to be completed within a period of eight (8) weeks from the date of receipt of a copy of this order.

9. With the above directions, the writ petition stands dismissed.



W.P.No.11902 of 2020

However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(S.M.S.J.,)

(K.R.S.J.,)

21.03.2024

Index : Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

(sha)

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S.M.SUBRAMANIAM, J.

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