



W.P.No.19941 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :28.06.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

W.P. No. 19941 of 2020

&

W.M.P. No. 24622 of 2020

K. Suresh

..Petitioner

Vs.

1.The District Collector,
Erode District.

2.The Thasildar,
Erode, Erode District.

3.M/s. Olirum Erode Foundation,
rep.by its Chairman,
M. Chinnasamy,
133, Ganthiji Road,
Opp. To Railway Station,
SKM Sri Building,
Erode 638 001.

..Respondents

Page Nos.1/7



W.P.No.19941 of 2020

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorarified Mandamus to call for the records pertaining to the order passed by the 1st respondent vide Na.Ka.No.088/2019/Mu.A dated 14.10.2019 permitting the 3rd respondent to form the Park in RS No. 70/1 (SF No. 256) in 47 M.S. Mangalam Village, Erode District and quash the same and consequently forbearing the 3rd respondent and his men and agents from levelling the Parai Kuttai situated in R.S. No. 70/1 (S.F. No. 256) in 47, M.S. Mangalam Village and also directing the 3rd respondent to restore the same to its original position within the time fixed by this Hon'ble Court.

For Petitioner :: Ms. R. Nirmala

For Respondents :: Mr.C. Selvaraj,
Addl. Govt. Pleader for RR1 and 2

O R D E R

(Made by *M. SUNDAR,J.*)

This order will now dispose of the captioned 'Writ Petition' ['WP' for the sake of brevity] and captioned 'Writ Miscellaneous Petition' ['WMP' for the sake of brevity]

2. Ms. R. Nirmala, learned counsel on record for writ petitioner is before us.

Page Nos.2/7



W.P.No.19941 of 2020

3. Adverting to a representation from the writ petitioner dated 09.10.2020, learned counsel submitted that there is 'water body (Kuttai) situate in R.S. No. 70/1 (S.F. No. 256) in 47, M.S. Mangalam Village, Erode District' [hereinafter 'said land' for the sake of brevity and convenience]. It was originally encroached by one Ramasamy and after his demise, his legal heirs vacated the same and handed over possession to respondents 1 and 2. It was submitted by petitioner that the first respondent District Collector vide proceedings dated 14.10.2019 had granted permission to third respondent to form a park in the said land. Taking advantage of the proceedings, the third respondent had started levelling the said water body. Therefore, the petitioner had sent aforesaid representation dated 09.10.2020 to first respondent District Collector requesting to prevent the third respondent from closing the water body. As there was no action, the captioned writ petition has been filed.

4. Mr.C.Selvaraj, learned Additional Government Pleader for respondents 1 and 2 is before this Court. Learned Additional Government Pleader submitted that second respondent has filed counter affidavit dated



W.P.No.19941 of 2020

01.07.2022 stating that the first respondent District Collector vide proceedings dated 14.10.2019 had granted permission to third respondent to form park in said land in order to prevent the general public from encroaching the same and to keep good environment. It is averred in the counter that there is no encroachment in said land and it is under the administration of the Government. Said land is geographically a rock portion and it will not help increase the ground water condition. Learned Additional Government Pleader further submitted that vide G.O.(Ms)No.64, Revenue and Disaster Management Department, Land Disposal Wing, dated 08.02.2022, three committees have been constituted for taking effective steps towards protection / maintenance of water bodies and other Government lands, at each level, as a single point reporting / monitoring system. However, in the captioned writ petition, encroachment has already been removed.

5. Learned counsel for petitioner has submitted that a suit was earlier filed before learned District Munsif, Erode in O.S.No.376 of 2000 qua alleged encroachment and eviction pertaining to said land. In the said suit,



W.P.No.19941 of 2020

an Advocate Commissioner was appointed to note down the physical feature of said land. In the report of the Advocate Commissioner, he has clearly mentioned about Kuttai.

6. Considering the obtaining position and that the representation of the petitioner was not considered and as it is submitted by the petitioner that said land is Kuttai and that an opportunity should be given to the petitioner to putforth his case, we are of the considered view that it would be appropriate to set aside the impugned order of first respondent dated 14.10.2019 without expressing any view or opinion on the merits of the matter.

7. In the light of the narrative thus far, impugned order of the first respondent District Court dated 14.10.2019 is set aside. The writ petitioner is directed to submit a fresh representation with relevant materials to the first respondent within a period of two weeks from the date of receipt of copy of this order. On receipt of the representation, the first respondent is directed to consider the same and take necessary action in accordance with law, within



W.P.No.19941 of 2020

a period of four weeks therefrom and communicate the same to the writ petitioner within a period of two weeks from the date on which action is taken.

8. It is open to the writ petitioner and or anyone concerned with this matter to come to this Court on the same issue even with a similar / same prayer if there are any change of circumstances.

9. Captioned WP is disposed of with the aforementioned observations and directives in the aforesaid manner and captioned WMP thereat is closed. There shall be no order as to costs.

(M.S.,J.) (K.G.T.,J.)
28.06.2024

Index : Yes / No
Speaking / Non-speaking order
Neutral Citation : Yes / No
nv/vvk

To

1.The District Collector,
Erode District.

2.The Tahsildar,
Erode, Erode District.

Page Nos.6/7



WEB COPY



W.P.No.19941 of 2020

M.SUNDAR, J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,

nv/vvk

W.P.No.19941 of 2020

28.06.2024

Page Nos.7/7