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W.P.No.21876 of 2017 & W.M.P. Nos.22905 & 38360 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

W.P.No.21876 of 2017 &
W.M.P. Nos.22905 & 38360 of 2017

K.E.Kailasapathi

... Petitioner

Vs.

1. The District Collector,
Erode District.
2. The Revenue Divisional Officer,
Brough Road, Erode 638 001.
3. The Tahsildar,
Modakkurichi Taluk,
Erode District.
4. M. Ganapathy (Retd VAO)
5. K. M. Nallasamy Gounder
6. K.M. Ramalingam
7. K. Chandrasekaran
8. N. Rajkumar

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ in the nature of Writ of Certiorari or any other appropriate writ, direction or order to call for records in



W.P.No.21876 of 2017 & W.M.P. Nos.22905 & 38360 of 2017

Na.Ka.29220/2012/U1, dated 22.10.2016, on the file of the 1st respondent and to consequently quash the same as illegal, incompetent and wholly without jurisdiction.

For Petitioner	:	Mr.Stalin for Mr.M.Guruprasad
For R1 to R3	:	Mr.A.Selvendran Special Govt. Pleader.
For R4 to R8	:	No appearance.

Ms. A. Saranya, Advocate Commissioner.

ORDER

(Order of the Court was made by **S.M.SUBRAMANIAM, J.**)

The complaint of the Writ Petitioner is that Odai Poramboke (water body) has been encroached upon by the contesting respondents and it was converted as a cart track. Thus, the present Writ Petition came to be instituted.

2. The learned counsel for the petitioner would submit that the subject property has been classified as Odai poramboke (water body). However, the respondents are attempting to convert it as a cart track by filling sands and



thereby depriving the people of the locality to preserve the water body.

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3. Water body is to be preserved to protect the environment and the water resource. No encroachment can be permitted in the water bodies and the authorities are expected to be sensitive towards such water bodies across the State.

4. Learned Government Pleader, relying on the impugned order, would submit that there is no encroachment as alleged in the Writ Petition. The subject portion of the Government land has been classified as Odai Poramboke and Cart track. The subject land has been used as an odai and as a cart track.

5. The details of width and length of the canal are provided in the order impugned itself. The relevant portion of the order reads as under:

"2. Accepting the technical opinion to widen the canal in order to expel the excess out flow of water during the rainy seasons from the canal situated in Re survey No.357/1 of Kagam Village, and taking into consideration of the welfare of the



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W.P.No.21876 of 2017 & W.M.P. Nos.22905 & 38360 of 2017

farmers and the village public it is ordered to the Modakurichi Panchayath and to the Modakurichi Block Development officer that after surveying the lands adjacent to the canal and cart track comprised in Re Survey No.357/1 and after confirming that there are no encroachments, and after that to make the cart track in width of 10 feet only in the North side of the canal in R.S. No.357/1 and to make the remaining portion of land as the canal ensuring that the excess water flows during the rainy season.

3. It is further ordered to construct the canal with the measurement of 4.70 meter bed in the bottom and 1.35 meter height, and with the waterway with the slanting of 1/2 : 1 ratio on either sides as per the technical advice."

6. The learned Advocate Commissioner filed a report confirming the order passed by the District Collector. The report of the Advocate Commissioner reads as under:

"Measurement of the breadth of Cart Track and Odai:

The breadth of the Cart Track from G to B (Reference is made to Annexure 6 and 14) has been measured from 6 different points and the measurement is as follows:



S.No.	Points (As mentioned in Annexure-14)	Breadth of the Cart Track (in metres)	Breadth of the Odai (in metres)	Total breadth of the cart track and odai (in metres)
1.	I	5.9	5.8	11.7
2.	II	6.2	6.4	12.6
3.	III	4.2	4.3	8.5
4.	IV	3.4	5.3	8.7
5.	V	4.6	5.4	10
6.	VI	4.2	10.2	14.4

Measurement of the Length of Cart Track and Odai:

The length of the Cart Track and Odai from G to B (Reference is made to Annexures 6 and 14) has been measured in 6 different places and the measurement is as follows:

S.No.	Points (As mentioned in Annexure-7)	Length of the Cart Track in the Northern side (in metres)	Length of the Cart Track in the Southern side (in metres)
1.	G to A	92.4	104.4
2.	A to B	174.2	157.2

29. The flow of the Odai from R.S. No.355/1 continues through R.S. No.357/1. Towards the end of R.S. No.355/1, the measurement of the breadth of the Odai taken at two points (Reference is made to Annexure-14), is 6.7 metres and 4.0



W.P.No.21876 of 2017 & W.M.P. Nos.22905 & 38360 of 2017

metres respectively. Also, the flow of Odai in R.S. No.357/1 continues through R.S. No.377/1 and as stated above, the measurement of the breadth of the Odai towards the end of the RS No.357/1 and at the beginning of R.S. No.377/1 is 10.3 metres"

7. In view of the fact that there is no encroachment as of now and the subject property has been used as cart track and odai, the relief as sought for in the present Writ Petition deserves no further consideration. The authorities are directed to maintain the said portion as described in the report free from encroachment.

8. With the above observations, the Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

**[S.M.S., J] [K.R.S., J]
12.02.2024**

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Internet : Yes

Index : Yes / No

Page 6 of 8



W.P.No.21876 of 2017 & W.M.P. Nos.22905 & 38360 of 2017

Neutral Citation : Yes / No

WEB COPY To

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