



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Civil Appellate Jurisdiction

Wednesday, the Twenty Third day of October Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice R.SUBRAMANIAN

AND

The Hon`ble Mr.Justice J.SATHYA NARAYANA PRASAD

WMP(MD). No.785 of 2023

IN

WP(MD)No.24203/2022

1. Jegan.M

2.M.Seenivasan

... Petitioners/Respondents 8,9

Vs

1 Maruthupandian

2 The District Collector

Thoothukudi District,Thoothukudi.

3 The Revenue Divisional Officer,

Kovilpatti, Thoothukudi District.

4 The Tahsildar

Kovilpatti Taluk,Thoothukudi District.

5 The Block Development Officer,

Kovilpatti, Thoothukudi District.

6 Balakumar M

(Wrongly Mentioned as M.Balamurugan)

S/o.Muthukrishnan,Venkatesapuram,

Kurumalai Post, Kayathar Taluk,Thoothukudi District.

7 Selvakumar D

8 Murugan T

9 Chelladurai S

... Respondents 2 to 9/Respondents1-7,10



Prayer in WMP(MD)No.785/2023 :-

This Writ Miscellaneous Petition is filed under Article 226 of the constitution of India, to recall the order of this Honourable Court dated 17.11.2022 in WP(MD) No. 24203/2022.

Prayer in WP(MD). 24203/ 2022 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Writ Petition, filed under Article 226 of the Constitution of India, praying this court to issue a Writ of Mandamus, directing the Respondents to implement the order of 2nd respondent in Na.Ka.Aa2/6220/2022 dated 06.09.2022 and to remove the encroachments made in Nilaviyal Odai Passing through S.Nos. 258, 260 and 262, Karthigaipatti Village, Kovilpatti Taluk, Thoothukudi District.

ORDER:-

This Petition coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of MR.Devaraj, Advocate for the Petitioner and of Mr.G.Prabhu Rajadurai, Advocate, For R1 and Mr.Thilak Kumar, Government Advocate, For R2 to 5, Government Advocate, for the respondents, this Court made the following order:

(Order of the Court was made by **R.SUBRAMANIAN, J.**)

“This is a classic case where the machinery provided under Article 226 of

the Constitution for redressal of public grievances has been abused by the 1st



respondent in collusion with the authorities.

2. A claim was made to the effect that the petitioners in these petitions had obstructed free flow of water in the Nilaviyal Odai thereby causing flooding in the village. A notice dated 06.09.2022 was issued to the petitioners under Section 133 of the Criminal Procedure Code, 1973. The said notice while requiring the petitioners to remove the obstruction, also called upon them to state their objections on 30.09.2022 at 11.00 a.m before the Revenue Divisional Officer, Kovilpatti. The petitioners had appeared on 30.09.2022 and submitted explanations before the authority concerned. Thereafter, it appears a writ petition in W.P(MD)No.24203 of 2022 was filed by the 1st respondent herein, seeking an innocuous prayer for a Mandamus, directing the official respondents to remove the encroachment made in the Nilaviyal Odai. The said writ petition came to be allowed directing the respondents to take action in accordance with law pursuant to the notice dated 06.09.2022 issued under Section 133 of the Criminal Procedure Code.

3. What happened thereafter was in complete transgression of all provisions of law by the revenue authorities. Without issuing any further notice and without following the procedure prescribed under Sections 134 to 141 of the Criminal Procedure Code which deal with removal of nuisance, the authorities removed the bund which was laid, according to the petitioners, pursuant to a decree for mandatory injunction granted by a Civil Court and reported such removal to this



Court. We are sure that this has been done by the 1st respondent in collusion with the revenue officials. In the absence of any order making absolute the notice issued under Section 133(1)(f) of the Code of Criminal Procedure which requires the Magistrate to make the notice absolute and thereafter notify the order to the person concerned and adopt the procedure prescribed under Section 137 when the right of the public is denied and thereafter pass an order under Section 141. None of these provisions have been followed and there is no order making the notice absolute. Therefore, the removal of the alleged encroachment or obstruction is *per se* illegal.

4. Hence, this petition is allowed. The orders dated 20.10.2022 and 17.11.2022 made in W.P(MD)No.24203 of 2022 are recalled. There will be a direction to the revenue department to restore the bund as it was in its original condition and file a report to this Court by 18.11.2024.

5. Post on 18.11.2024 under the caption 'for compliance and filing of report'."

Sd/-

Assistant Registrar(C.O)

// True Copy //

/11/2024

Sub Assistant Registrar
(CS - I/ II / III /IV)



1. The District Collector
Thoothukudi District Thoothukudi.
2. The Revenue Divisional Officer,
Kovilpatti, Thoothukudi District.
3. The Tahsildar
Kovilpatti Taluk, Thoothukudi District.
4. The Block Development Officer,
Kovilpatti Thoothukudi District.

Copy to:

The Section Officer,
Writ Section,
Madurai Bench of Madras High Court,
Madurai.(for reporting compliance)

+1CC to Mr.R.Devaraj, Advocate SR.No.59919

ORDER DATED : 23/10/2024

ORDER

WMP(MD). No.785 of 2023
IN
WP(MD)No.24203/2022

KVL/12.11.2024 5P/7C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023