
(2013) 09 MAD CK 0172

In the Madras High Court

Case No : Writ Petition No. 34431 of 2012 and M.P. No's. 2 and 3 of 2013

A.R. Gokulakrishnan

APPELLANT

Vs

The Secretary, Union Public Service Commission and Others

RESPONDENT

Date of Decision : 05-09-2013

Acts Referred:

Citation : (2013) 8 MLJ 319

Hon'ble Judges : T.S. Sivagnanam, J;R. Banumathi, J

Bench : Division Bench

Advocate : P. Raja, Mr. P. Kumaran and P. Prabavathy, for the Appellant; P.S. Shivashanmughasundaram, Spl. G.P for RR3, 4, 6 and 8, Mr. N. Inbanathan Govt., Advocate (Forest) for R5, Mr. R. Sivakumar, A. Vijayakumar and Mr. A. Vinothraj for R7 and No Appearance for RR1 and 2, for the Respondent

Final Decision : Disposed Off

Judgement

R. Banumathi and T.S. Sivagnanam, JJ.—This Writ Petition designed as a Public Interest Litigation has been filed for issuance of a writ of Mandamus, to direct the respondents 1 to 6 to commence detailed probe and enquiry into the unlawful and illegal activities and, abuse and misuse of official position by the seventh respondent, who is a IA & AS Officer currently the Executive Director of the Tea Board at Nilgiris District. The petitioner claims himself to be a social activist and a son of a freedom fighter espousing the causes of general public, poor agriculturists, Tribals and others living in and around the region of the Kodaikanal Hills. The petitioner would further state that the seventh respondent is abusing and misusing his official position and has encroached vast extent of Forest land by engaging his henchman. It is stated that the seventh respondent and his henchman have encroached the lands comprised in Survey No. 671/2, Poolathur village and its adjoining Survey numbers measuring about 1 acre and 30 cents and in the said land, there is a monumental structure called "Mirror Palace" (fz;zho khspif). It is further stated that such of those persons, who have voiced against the activities of the seventh respondent were subjected to torture

and harassment. It is further stated that the seventh respondent has been carrying on agricultural activities in the said land by planting coffee, orange and other commercial crops. It is further submitted that when the petitioner pointed out the illegalities committed by the seventh respondent, the seventh respondent using his official power, transferred the petitioner's wife, who was working as a Teacher. Further, it is stated that the structure known as "Mirror Palace" was demolished by the seventh respondent. Therefore, according to the petitioner, the matter requires to be probed thoroughly for which purpose, the petitioner states that he had submitted a representation on 07.12.2012 and filed this writ petition for the aforementioned relief.

2. The District Collector, sixth respondent has filed a counter affidavit stating that the land comprised in Survey No. 671/2, is not a Reserve Forest Land, but as per the revenue records, it is a Government Poramboke land under the control of the revenue department. It is further submitted that once upon a time, there was a building in the said land, which is now in a dilapidated condition and only half of the walls are seen amidst the bushes and this building is noted as "Forest Bungalow" in the "A" Register. It is further stated that one Mr. T.A. Ramasamy encroached the said land and notice u/s 7 of the Tamil Nadu Land Encroachment Act was issued to him during 1988. It is further submitted that no such notice was issued to the seventh respondent. That the seventh respondent is owning lands in Survey No. 670, which is adjoining to the Government Poramboke land in Survey No. 671/2 and the seventh respondent has not encroached the said Government Poramboke land. It is further stated that the transfer of the petitioner's wife was purely on administrative grounds, as the public of the village submitted a complaint before the sixth respondent and on enquiry, it revealed that the petitioner's wife was using unparliamentary language against the children and keeping in view of the public interest, the petitioner's wife was transferred purely on administrative ground to school in Kumbaraiyur village, which is very near to the school, where she was working. Further, it is submitted that the writ petition is not a Public Interest Litigation, but a private interest litigation.

3. The seventh respondent in his counter affidavit while denying and disputing the allegations made by the petitioner, has contended that the writ petition styled as a Public Interest Litigation is a thorough misuse of power and process of this Court. It is further contended that the seventh respondent and the writ petitioner belonged to the same village and have known each other since childhood. It is further stated that the land in Survey No. 670 is the ancestral property of the seventh respondent, presently in his occupation and he has disclosed this in his property statement submitted to the Government. Survey No. 671/2 is located adjacent to the seventh respondent's ancestral property and the lands in Survey Nos. 671/1 and 671/2 provides a pathway to reach the seventh respondent's patta land in Survey No. 670 and such pathway has been in existence from time immemorial. It is further stated that one T.A.R. Kamatchi, son of T.A. Ramasamy Chettiar and his family members were in possession and

enjoyment of a major portion of the land to an extent of 1 acre and 85 cents for several years and the revenue records pertaining to those lands establish that Survey No. 671/2, is a "Paathai Poromboke" and not a Reserve Forest as alleged by the petitioner. It is further stated that the said T.A. Ramasamy have recently sold the land to one Mr. K. Senthil Murugan, who also belongs to a same village. The allegation that the petitioner demolished the Mirror Palace is false. The seventh respondent has further stated that the petitioner is not a social activist, but a person engaged in Katta Panchayat and there are several allegations against the petitioner and the people of the village have also given complaints. It is further alleged that the petitioner is indirectly attempting to grab a valuable property of the Primary Health Centre of Poolathur village and the public have made complaint to the authorities in this regard. Since no action was taken, the seventh respondent sent a letter to the Secretary to the Government to protect the said property. In order to thwart any such attempt by the officials, the petitioner has resorted to filing this writ petition, with a view to threaten the seventh respondent. Therefore, it is submitted that there is no public interest involved in this writ petition and the writ petition is liable to be dismissed.

4. The petitioner has filed a Miscellaneous Petition in M.P. No. 2 of 2013, for a direction to the respondents 6 to 8 to prevent harassment to the petitioner and his family members. In the affidavit, it is alleged that the seventh respondent has instigated his henchmen to file a criminal complaint against the petitioner in Crime No. 172 of 2012, on the file of the Thandigudi Police Station through one Mr. Pandi, who is employee of the seventh respondent and a complaint against the petitioner's uncle through one Mr. Pandiraj, who is also working in the seventh respondent's farm. Therefore, the petitioner would state that the Inspector of Police, Thandigudi Police Station has to be impleaded as respondent and necessary directions should be given to safeguard his interest and the safety of his family members.

4. The Division Bench which heard the matter earlier by order dated 26.06.2013, directed the learned District Judge, Dindigul, to inspect the land and conduct a survey in the presence of the parties after giving proper notice to them with the assistance of the District Surveyor and submit a report with regard to the encroachment of land in Survey No. 671/2, which is adjacent to the lands in Survey No. 670 and with regard to the allegations made in the writ petition. Pursuant to such direction, the learned District Judge has inspected the property and filed a report before this Court.

6. We have heard the learned counsel appearing for the parties and perused the materials placed on record including the report submitted by the learned District Judge, Dindigul along with sketch prepared by the District Surveyor.

7. On a careful analysis of the facts as pleaded in the affidavit filed in support of the writ petition and in the counter affidavit filed by the seventh respondent, it is evident that this writ petition is a sequel to a private dispute between the petitioner and the seventh respondent, whose hail from the same village and

have known each other since childhood. While the petitioner would allege that the seventh respondent is acting in a high handed manner abusing his official position, the seventh respondent would accuse the petitioner of conducting "Katta Panchayat" alleging attempt to grab public property and the villagers have also given complaint against the petitioner in this regard. The petitioner would further state that he and his family members are at peril, since the seventh respondent has set up his henchman to lodge criminal complaints against the petitioner and his uncle apart from exerting pressure on the educational authorities to transfer the petitioner's wife, who was working as a Teacher in a Government school.

8. Under normal circumstances, we would have no hesitation to throw this writ petition out of this Court on the ground that there is no public interest involved and it is purely a private interest litigation. However, we do not propose to do so in the light of the report submitted by the learned Principal District Judge, Dindigul, and the report of the Forest Department. We make it clear that the allegation and counter allegation made by the petitioner and the seventh respondent against each other are not gone into and it is for both the parties to work out their rights in the manner known to law.

9. The learned Principal District Judge along with the District Surveyor inspected the site on 11.07.2013, in the presence of the petitioner, the District Forest Officer, Kodaikanal, the elder brother of the seventh respondent, the Inspector of Police, Thandigudi Police Station and Assistant Director (Survey), Dindigul. During the course of such inspection, the learned Principal District Judge observed that there is a pathway on the eastern side of survey No. 671/2, and the entire pathway is in S. No. 671/2. The District Judge had also noticed encroachment in S. No. 671/2 and also noticed plantation of Crops like Coffee, Orange and Jackfruit Trees. The relevant portion of the report of the District Judge reads as under:

.... Department that the land in Survey No. 671/2, measuring 0.53.0 Hectare is not Reserve Forest Land and it is Government Poramboke land.

During my inspection, I found that there is a pathway on the eastern side measuring 80 meter length and 3 meter breadth, running South to North touching the property in S. No. 670/2.B on the northern side. The entire pathway is situated only in S. No. 671/2 only on the western side of land in S. No. 680/2 and 680/3. The pathway was fenced on both side stretching 80 meters each side leaving 3 meter gap in between. The said pathway has been shown in blue colour in the FMB sketch No. 1 attached herewith. It is pertinent to note here that at the northern end of above said pathway there is a triangular shaped encroachment extending 49.21 sq.m. i.e., about 530 sq.ft., in S. No. 671/2 adjacent to land in S. No. 670/2B. Further the Survey Stone on the north-west Corner, and another one at 28.9m distance towards east from northwest corner were not found and only one stone at the north east corner was available and found., i.e., only one Survey Stone on the north eastern corner was found and 2

more stones were found missing on the northern boundary. Further no Forest Bungalow as shown in "A" Register was found there; instead there was a dilapidated one side wall measuring about 10ft length and 6.5 ft height alone found there. Further, there is a small temple, like structure, having a lance erected with small lamp placed before it, on the south west area of the land and the same was shown in yellow colour in the sketch. Coffee, Orange and Jack Fruit Trees have been cultivated not only in the land but also in the surrounding lands. I have noticed all the above features during my thorough inspection and diligent survey of the land in Survey No. 671/2 and other surrounding lands.

10. The learned Special Government Pleader (Forest Cases) has filed typed set of papers containing the inspection report of the Conservator of Forest, Dindigul circular submitted to the Principal Chief Conservator of Forest as regards the said property. From the report, it is seen that as per the "A" Register and adangal account, the land measuring 0.53.0 hecets in Survey No. 671/2, has been recorded as a "Forest Bungalow", though in the remarks column, the land is shown as Government Poromboke land. It is further stated that this extent has not been declared as a Reserve Forest or reserved land. Since the said land has been described as "Forest Bungalow", the District Forest Officer, Kodaikanal has requested the District Collector, Dindigul by letter dated 28.02.2013, to remove the encroachments. Further, in the report, it is stated that one T.A. Ramasamy Chettiyar encroached the land in Survey No. 671/2 and obtained "B" memos in his name. Thereafter, he said to have executed a unregistered Will in favour of his sons viz., T.A.R. Kamatchi, T.A.R. Ayyappan, T.A.R. Annadurai, T.A.R. Perumal, which is illegal and against law. It is further stated that the said T.A.R. Kamatchi and his sons Sivakumar and Veeramani have sold the land to Senthil Murugan. Further, one S. Pandiyan son of Sivanathan of Poolathur village has given a statement that the land in Survey No. 671/2 is in his possession as Senthil Murugan has disowned the property out of fear as the issue is under investigation. Further reference has been made to the letter of the District Forest Officer addressed to the District Collector, Dindigul, dated 28.02.2013, to cancel the "B" memos issued to T.A. Ramasamy and also to hand over the land in Survey No. 671/2 to the District Forest Officer, Kodaikanal, so as to send necessary proposal to declare the area u/s 26 read with Sections 4 & 16 of the Tamil Nadu Forest Act, 1882 for protecting the land from the point of Forest Conservation along with the report dated 10.03.2013, the statements recorded from the presence mentioned in the report along with the copies of the revenue records, "B" memos issued and the letter to the District Collector dated 28.02.2013, have been enclosed.

11. The District Collector Dindigul has filed a counter affidavit in this writ petition dated 19.03.2013, curiously there is no reference to the letter sent by the District Forest Officer, Kodaikanal, dated 28.02.2013, requesting the Collector to take action for removal of the encroachment that there is a vague averment stating that notice u/s 7 of the Tamil Nadu Land Encroachment Act was issued to

T.A. Ramasamy during 1988. The focus in the counter affidavit appears to only exonerate the seventh respondent stating that he is not an encroacher of a Government land and the petitioner's wife was transferred on administrative grounds, as there was complaint against her. The revenue administration, which is under direct supervision and control of the District Collector has miserably failed to protect the Government property comprised in Survey No. 671/2. The reply given by the District Collector stating that notice under the Land Encroachment Act was issued to T.A. Ramasamy in 1988 without even mentioning as to what further action was taken clearly confirms that the District Administration has failed to protect the Government property. The said Government property has been partitioned among the children of T.A. Ramasamy and his son T.A.R. Kamatchi and his sons have sold the property to Sivakumar and Veeramani. It is stated that One S. Pandiyan son of Sivanathan has given a statement before the Conservator of Forest, Dindigul circle that he is in possession of the Government property and Senthil Murugan has disowned out of fear as investigation is being done. The petitioner has made allegation stating that the said Pandiyan son of Sivanathan is an employee in the farm of the seventh respondent and he has given a criminal complaint in Crime No. 172/2012 against the petitioner and the other complainant is one Pandiyarajan son of Pandiyan, who is relative of the seventh respondent.

12. We fail to understand as to how the Village Administrative Officer and the Tahsildar under whose jurisdiction the Government Poramboke land in Survey No. 671/2 falls have been silent spectator to the land grabbing done by all the people whose names have been referred supra. Therefore, this is a fit case where, appropriate direction should be issued in order to safeguard the Government property, moreso, when the District Administration has failed to protect the property from the hands of the land grabbers.

13. As observed earlier, we do not propose to go into the controversy as to who has encroached or grabbed or attempted to grab the Government property, but are concerned only with the aspect regarding protection of Government property, classified as Government Poramboke land. There is further allegation that the petitioner himself is an encroacher. If that be so, that action has to be taken against the petitioner also for removal of such encroachment.

14. We constrained to issue the following directions in the light of our categorical finding that the District Administration has failed to protect the Government property and it appears that certain private parties have been dealing with the property as if, it is their private patta land.

15. For all the above reasons, while declining to grant the relief sought for by the petitioner, there will be a direction to the sixth respondent to remove all the encroachments in S. No. 671/2 and to hand over the entire extent of property comprised in Survey No. 671/2, Poolathur village, after removing all the encroachments in the property, to the Conservator of Forest, Dindigul Circle, Dindigul, who shall take possession of the land, and take immediate steps to

erect a fence around the entire extent of Survey No. 671/2 and send a proposal to the competent authority for declaring the area as a Forest Land under the provisions of the Tamil Nadu Forest Act, 1882, within a period of three weeks from the date on which, possession is handed over.

16. The District Collector, sixth respondent shall comply with the above directions, within a period of three weeks from the date of receipt of a copy of this order. For the effective implementation of the order and direction issued above, the District Collector shall be entitled to deploy police force if in his opinion the same is required and comply with the direction scrupulously without any default. On taking over possession, the District Forest Officer shall protect the property by erecting the fence and preserve the property as such till the same is declared as a Forest area under the Tamil Nadu Forest Act. It is found that the petitioner is an encroacher of any Government property, it is needless to state that the sixth respondent shall take immediate steps to remove the encroachments by following the procedure. In the result, the writ petition is disposed of with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.