

(2010) 09 MAD CK 0280

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) No. 3353 of 2009, Writ Appeal (MD) No. 376 of 2010 and M.P.
(MD) No. 1 of 2009

Narayanasamy

APPELLANT

Vs

The District Collector and Others

The Executive Officer,

Arulmigu Abaya Varadeswarar

RESPONDENT

Temple Vs S. Sivagurunathan

Thevar and The District Collector

Date of Decision: Sept. 20, 2010

Acts Referred:

- Constitution of India, 1950 - Article 226

Hon'ble Judges: S. Nagamuthu, J; P. Jyothimani, J

Bench: Division Bench

Advocate: M.V. Venkateseshan, in W.P. MD No. 3353 of 2009 and V.K. Vijayaragavan, in W.A. MD No. 376 of 2010, for the Appellant; V. Rajasekaran, Special Government Pleader for R-1 to R-3 in W.P. (MD) No. 3353 of 2009 and for R-2 in W.A. (MD) No. 376 of 2010, V. Ramamoorthy, for R-4 in W.P. (MD) No. 3353 of 2009, D. Rajagopal, for R-5 in W.P. (MD) No. 3353 of 2009 and S. Saravanakumar, for R-1 in W.A. (MD) No. 376 of 2010, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

P. Jyothimani, J.

Since common issues are involved in both the writ petition and the writ appeal, both the writ petition and the writ appeal were heard together and disposed of by this common order.

2. The writ petition in W.P.(MD) No. 3353 of 2009 is for a direction to the fourth Respondent to provide sewerage channel provision to the house of Petitioner

situate in Door No. 78/17 Sethu Road, Athirampattinam, Pattukottai, Thanjavur District through Survey No. 338/3.

3. Admittedly, the Petitioner has already approached the Civil Court and filed a suit in O.S. No. 42 of 2009 on the file of the District Munsif Court, Pudukkottai for permanent injunction. The Petitioner, having not obtained an interim order of injunction, has chosen to file the present writ petition for a direction as stated above.

4. On the face of it, this is to be termed as abuse of process of law and the Petitioner, having filed the suit before the Court, cannot approach this Court for the very same relief under Article 226 of the Constitution of India by way of the present writ petition. In such view of the matter, leaving the option open to the Petitioner to work out his remedy in the suit filed by him before the Civil Court, this Writ Petition is dismissed. However, there will be no order as to costs. Consequently, the connected M.P.(MD) No. 1 of 2009 is also dismissed.

5. The Writ Appeal in W.A.(MD) No. 376 of 2010 arises out of the order dated 07.01.2010 made in W.P.(MD) No. 185 of 2010, wherein the learned Single Judge has directed the first Respondent/District Collector, Thanjavur District to consider the representation of the Petitioner therein in respect of the drainage of channel.

6. It is seen from the records that in the writ petition in W.P.(MD) No. 185 of 2010, the pendency of the suit filed in O.S. No. 42 of 2009 on the file of the District Munsif Court, Pudukkottai for permanent injunction has not been brought to the notice of the Court and it was in those circumstances, the learned Single Judge directed the first Respondent/District Collector, Thanjavur District to consider the representation of the Petitioner.

7. On the face of it, the issue involved has already been referred to the Civil Court and the Civil Court has seized of the matter. Hence, we are of the view that giving a direction to the first Respondent to consider and dispose of the representation of the Petitioner is of no use.

8. In such view of the matter, the Writ Appeal in W.A.(MD) No. 376 of 2010 is allowed and the impugned order of the learned Single Judge is set aside. However, there will be no order as to costs. It is made clear that the parties have to work out their remedies in the Civil Court, which is already seized of the matter.