



W.P.(MD) No.21446 of 2018

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.21446 of 2018

A.Raju

... Petitioner

/vs./

- 1.The District Collector,
Kanyakumari District @ Nagercoil.
 - 2.The Assistant Director of Panchayat,
Kanyakumari District @ Nagercoil.
 - 3.The Block Development Officer (Village Panchayat),
Thiruvattar Panchayat Union,
Kanyakumari District.
 - 4.The Block Development Officer/Executive Officer,
Pechipparai Village Panchayat,
Kanyakumari District.
- ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the 3rd and 4th Respondents herein to Revoke the resolution passed in the 4th Respondent Panchayat dated 18.01.2017 by cancellation of Assessment of Tax for the Petitioner's house bearing Door No. 8-15 of Pechipparai Village Panchayat and to restore the same to its original



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position and permit him to pay house tax before them on the basis of the representation dated 28.06.2018.

For Petitioner : Mr.B.Brijesh Kishore

For Respondents : M/s.S.Jayapriya
Government Advocate

ORDER

The petitioner has filed this writ petition for a Writ of Mandamus to direct the respondents 3 and 4 to revoke the resolution passed in the fourth respondent Panchayat dated 18.01.2017 for cancellation of Assessment of Tax for the petitioner's house bearing Door No.8-15 of Pechipparai Village Panchayat and to restore the same to its original position and permit him to pay house tax before them on the basis of the representation dated 28.06.2018.

2.The petitioner had earlier approached the learned District Munsif Padmanabhapuram in O.S.No.236 of 2001 apprehending eviction without authority of law.

3.The suit was filed for permanent injunction from obstructing the petitioner or in any manner interfering with the peaceful possession and



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enjoyment of the property and also causing any acts of waste by cutting and removing the trees and demolishing the house of the plaintiff in the suit schedule property.

4.The suit was decreed by the trial Court by its judgment and decree dated 24.08.2004. However, while allowing the suit, the Court had given liberty to the respondents to take steps to evict the petitioner in accordance with law.

5.Aggrieved by the same, both the petitioner and the first respondent had filed appeals before the Sub Court, Padmanabhapuram in A.S.Nos.143 of 2004 and 139 of 2005 respectively.

6.The Sub Court, Padmanabhapuram, disposed of the appeals of the petitioner and the first respondent by judgment and decree dated 01.02.2006.

Paragraphs 12 and 13 of the said judgment read as under:

“12.இறுதியில் இந்த மேல்முறையீடு பகுதியாக அனுமதிக்கப்பட்டு கீழமை நீதிமன்றம் மு.உ.வ.எண் 236/2001-ல் 24.8.2004-ம் தேதியன்று பிறப்பிக்கப்பட்ட தீர்ப்பு மற்றும் தீர்ப்பாணை மாற்றியமைக்கப்பட்டு வாதி/எதிர்மேல்முறையீட்டாளர் வீட்டில் வசிப்பதற்கு மட்டும் நிரந்தர உறுத்துக்கட்டளை வழங்கப்படுகிறது. வீட்டைச் சுற்றியுள்ள மரங்களை வெட்டவும் அழிக்கவும் அனுபவம்



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செய்யவும் புதிதாக மரம் நடவும் வாதிக்கு உரிமை இல்லை என்றும், பிரதிவாதிகள் வாதிக்கு எதிராக சட்ட பூர்வமான நடவடிக்கைகள் மேற்கொள்ள இந்த தீர்ப்பு தடையாக இருக்காது என்பதைப் பொறுத்துள்ள தீர்ப்பு உறுதி செய்யப்பட்டு, செலவுத்தொகையுடன் தீர்ப்பு வழங்கப்படுகிறது.

மே.மு.வ.எண். 143/2004

13.இறுதியில், இந்த மேல்முறையீடு செலவுத்தொகையின்றி தள்ளுபடி செய்யப்பட்டு, கீழமை நீதிமன்றம் மு.உ.வ.எண் 236/2001-ல் 24.8.2004-ம் தேதியன்று பிறப்பிக்கப்பட்ட தீர்ப்பு மற்றும் தீர்ப்பாணை மாற்றியமைக்கப்பட்டு வாதி/மேல்முறையீட்டாளர் வீட்டில் வசிப்பதற்கு மட்டும் நிரந்தர உறுத்துக்கட்டளை வழங்கப்படுகிறது வீட்டைச் சுற்றியுள்ள மரங்களை வெட்டவும் அழிக்கவும் அனுபவம் செய்யவும். புதியதாக மரம் நடவும் வாதிக்கு உரிமை இல்லை என்றும் பிரதிவாதிகள் வாதிக்கு எதிராக சட்ட பூர்வமான நடவடிக்கைகள் மேற்கொள்ள இந்த தீர்ப்பு தடையாக இருக்காது என்பதைப் பொறுத்துள்ள தீர்ப்பு உறுதி செய்யப்பட்டு, செலவுத்தொகையுடன் தீர்ப்பு வழங்கப்படுகிறது.”

7.Thereafter, the petitioner has approached the Division Bench of this Court in S.A.(MD) Nos.41 and 42 of 2007 against the judgment and decree in the respective appeals filed by the petitioner in A.S.No.143 of 2003 and by the first respondent in A.No.139 of 2005.

8.By an order dated 08.01.2018, this Court has granted interim relief to the petitioner in M.P(MD)No.1 of 2007 in S.A.(MD) No.41 of 2007 with the following observations:



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“8.The second appeal itself has been preferred against the judgment and decree dated 01.02.2006 in A.S.No.139 of 2005 in so far as the appellate decree injunctioning the planting, cutting and removal of trees or enjoyment of its yieldings or its usufructs by the petitioner herein. Therefore, in case the decree, as such, is stayed as prayed for herein, it will amount to the grant of a decree in the second appeal and there will not be anything to be decided in the second appeal. Therefore, I am of the considered view that the petitioner is not entitled for an unconditional stay of operation of the decree as prayed for in the present application. However, the property has also to be preserved and the interest of both parties are to be safeguarded pending disposal of the second appeal. As such, I am inclined to pass an order of stay of the appellate decree dated 01.02.2006 in A.S.No.139 of 2005 only in so far as its direction restraining the petitioner from enjoying the yieldings or usufructs in the property. Since the planting could be made only after cutting and removing the trees in the property, the petitioner is not permitted to plant trees by cutting and removing the trees and as such, as indicated above, the stay will be confined to the decree direction pertaining to enjoyment of the yieldings or usufructs from the trees in the property.

9.In view of the short question involved in the appeal, it will be open to the parties to file appropriate application for fixing an earlier date for disposal of the second appeal.”

9.In this writ petition, it is the case of the petitioner that the petitioner has been in undisputed peaceful possession of the property for all along 35 years and that the respondents have illegally removed the name of the petitioner from the



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house tax register of the Panchayat.

10.It is submitted that the third respondent/the Block Development Officer, has no right to remove the name of the petitioner from the house tax register. It is submitted that the removal was without notice to the petitioner and that the petitioner had been paying tax from 01.04.2016 to 31.03.2017 and therefore, the question of passing a resolution by the fourth respondent to remove the name of the petitioner on 18.01.2017 was without any authority of law.

11.It is further submitted that the petitioner has not given any representation to state that the petitioner wants to demolish the house and that the petitioner did not wish to pay tax thereafter and that the aforesaid resolution was passed without the knowledge of the petitioner.

12.It is further submitted that the petitioner has sent a representation to the third respondent on 28.06.2018 setting out the grievances and to revoke the cancellation of the assessment. Despite the same, it has not evoked any response.

13.The learned Government Advocate, on the other hand, would submit



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that the property belongs to the Forest Department and that the petitioner is not having any right claiming ownership over the property in Old.S.No.3074, Surulacode Revenew Village, Kulasekharam Taluk.

14.It is further submitted that there is no house in Old.S.No.3074 and that the assessment tax was also cancelled and therefore, the question of collection of house tax does not arise. It is further submitted that under Section 172 of the Tamil Nadu Panchayat Act, 1994, the house tax is to be collected only for an existing house after verification.

15.It is submitted that however, on verification, it was found that there was no existing house in the same property and therefore, following the instructions in G.O(Ms)No.255, Rural Development Department, dated 13.12.1999, the aforesaid resolution was passed on 18.01.2017.

16.That apart, the learned Government Advocate has produced a copy of communication dated 02.06.2022 addressed to the District Forest Department, Nagercoil, content of which, is reproduced below:



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“பார்வையில் காணும் கடிதத்தில் கன்னியாகுமரி மாவட்டம், திருவட்டார் வட்டம் சுருளகோடு கிராமம், பழைய புல எண் 3074-க்கான புலஒப்புமை விபரம் கேட்டது தொடர்பாக இவ்வலுவலக புல ஒப்புமை பதிவேட்டினை பரிசீலனை செய்ததில் மேற்படி பழைய புல எண் 3074-க்கு புதிய புல எண்ணுக்கான கலத்தில் RF (Reserve Forest) என பதிவு உள்ளது என்பதை தெரிவித்துக் கொள்கிறேன். அதன் நகலினை இத்துடன் இணைத்துள்ளேன். இணைப்பு: மேற்கண்டவாறு”

17.Having considered the submissions made by the learned counsel for the petitioner and the learned Government Advocate for the respondents and having perused the records, I am of the view that the petitioner cannot claim assessment over the property, if the property in question does not fall within the purview of the Panchayat. Therefore, the removal of the property tax assessment by the fourth respondent pursuant to a resolution dated 18.01.2017 cannot be questioned.

18.Admittedly, even according to the petitioner, the land in question falls within the purview of the Reserve Forest Department under the jurisdiction of the Forest Department. Therefore, there is no merit in this Writ Petition. However, it is for the Forest Department to evict the petitioner for encroaching the property in accordance with law as was ordered by the Sub Court, Padmanabhapuram in



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A.S.Nos.143 of 2003 and 139 of 2005.

19.With the above directions, the Writ Petition stands dismissed. No costs.

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Internet : Yes / No

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To

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Kanyakumari District @ Nagercoil.
- 2.The Assistant Director of Panchayat,
Kanyakumari District @ Nagercoil.
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C.SARAVANAN, J.

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