



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.01.2015

CORAM:

THE HONOURABLE DR.JUSTICE S.TAMILVANAN
and
THE HONOURABLE MR. JUSTICE V.S.RAVI

W.P. (MD) No.16548 of 2014

and

M.P. (MD) No.1 of 2014

P.Srinivasan

... Petitioner

Vs.

1.The District Collector,
Collectorate,
Office at Nagercoil,
Kanyakumari District.

2.The Kuruthancode Panchayat,
Rep.through its President,
Kurunthancode Post,
Kanyakumari District.

... Respondents

PRAYER: The Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents herein not to take any co-ersive steps for evicting the petitioner herein from the land in re survey No.488/11 and 488/19 measuring 1 acre and 43 cents thoppu with building in Door No.5/48-E and a well in Kurunthancode Village, Kanyakumari District without following due process of law till the disposal of the Civil proceedings initiated by the petitioner.

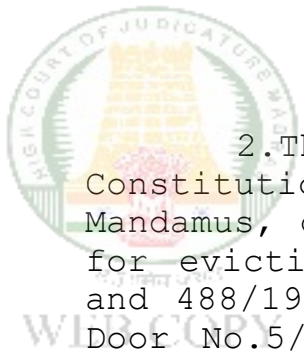
For Petitioner : Mr.D.Nallathambi

For Respondents : Mr.A.K.Baskara Pandian,
Special Government Pleader, for R1
Mr.M.Murugan for R2

ORDER

(Order of this Court was made by S.TAMILVANAN,J.)

Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the second respondent.



2.The Writ petition has been filed under Article 226 of the Constitution of India, seeking an order in the nature of Writ of Mandamus, directing the respondents not to take any coercive steps for evicting the petitioner from the land in resurvey No.488/11 and 488/19 measuring 1 acre and 43 cents Thoppu with building in Door No.5/48-E and a well in Kurunthancode Village, Kanyakumari District, without following due process of law till the disposal of the Civil proceedings initiated by the petitioner.

3.It is an admitted fact that a suit was filed by the petitioner against the first respondent in O.S.No.141 of 2005 before the Sub Court, Padmanabhapuram. However, the suit was dismissed on 10.06.2014. Aggrieved by which, an appeal was preferred by the petitioner with a petition to condone the delay under Section 5 of Limitation Act, which is pending before the Appellate Court and therefore, the petitioner is in need of immediate protection from evicting him in the above said lands, without following due process of law till the disposal of the civil proceedings.

4.The suit dismissed by the Trial Court and there is no appeal is pending. As appeal is said to have been filed with a petition to condone the delay in filing appeal, only after condoning the delay, the appeal could be numbered. As such there is no civil proceeding is pending in the eye of law. Admittedly, the above mentioned lands in Survey Nos.458/11 and 458/19 measuring 1 acre 43 cents are only Government Poramboke lands. When the said lands are Government Poramboke, the respondents are entitled take appropriate action according to law. Had the petitioner been aggrieved by the dismissal of the suit, he could have preferred appeal in time and also obtained interim order. The Writ petition filed by the petitioner is based on disputed question of fact and the relief sought for in the Writ petition is to restrain the respondents from taking steps to evict the Writ petitioner, till the disposal of the civil proceedings, which is not only an interim prayer relating to the suit, but, also not legally sustainable in view of the fact that the suit was dismissed and no appeal is pending.

5.On the aforesaid facts and circumstances of the case and the grounds raised in the Writ petition, we are of the view that the petitioner is not entitled to seek the relief sought for in this Writ petition. Accordingly, the Writ petition is dismissed.

No costs. Consequently, connected M.P.is closed.

Sd/-

Assistant Registrar(C.O.,)



To

1.The District Collector,
Collectorate, Office at Nagercoil, Kanyakumari District.

2.The President, Kuruthancode Panchayat,
Kurunthancode Post, Kanyakumari District.

+1cc to Mr.D.Nallathambi, Advocate, in SR. No.2771.

+1cc to Special Government Pleader, in SR No.3346.

W.P. (MD) No.16548 of 2014
21.01.2015

nbg

msm 23.02.2015 p3/5c