

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.03.2016

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.10959 of 2016
and
W.M.P.No.9552 of 2016

S.K.Myilsamy

...Petitioner

Vs.

1. The District Collector,
Office of District Collector,
Coimbatore District.

2. The President,
Somayampalayam Panchayat,
Bharathiyar University Post,
Coimbatore - 641 046.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus, forbearing the second respondent and his subordinates from interfering with the petitioner's peaceful possession and enjoyment of the land, having 110 feet length and 8 feet width at S.F.No.1/3 in S.K.V. Nagar of Somayampalayam Village, without following the due process of law.

For Petitioner : Mr.N.Ponraj

For Respondent-1 : Mr.R.M.Muthukumar
Government Advocate

For Respondent-2 : Mr.P.S.Shivashanmughasundaram

O R D E R

Heard Mr.N.Ponraj, the learned counsel appearing for the petitioner, Mr.R.M.Muthukumar, the learned Government Advocate, who accepts notice for first respondent and Mr.P.S.Shivashanmughasundaram, the learned counsel, who accepts notice for second respondent. With the consent of the parties, the main Writ Petition is taken up for final disposal at the stage of admission itself.

2. The petitioner has filed this Writ Petition for the following relief:

To issue mandamus, forbearing the second respondent and his subordinates from interfering with the petitioner's peaceful possession and enjoyment of the land, comprised in S.F.No.1/3 in S.K.V. Nagar of Somayampalayam Village, without following the due process of law.

3. The petitioner grievance is that, his private property, morefully described in para No.2 of this order, is being utilized by the President of the second respondent/Panchayat for the formation of road. The petitioner claims right over the said property, pursuant to a decree granted in a partition suit, in O.S.No.233 of 1999, dated 23.04.2013. The petitioner's case is that, he has been in peaceful possession and enjoyment of the property, without any interruptions. When there was an attempt by the Panchayat earlier, i.e. during the year, 2006, the petitioner approached the Civil Court, viz., District Munsif Court, Coimbatore, and filed three suits, viz., O.S.Nos.2535, 2719 and 2943 of 2006, and obtained a decree of injunction on 16.11.2011. Subsequently, the petitioner has filed another suit for a decree of permanent injunction before the District Munsif Court, Coimbatore, being O.S.No.652 of 2015, in which, the second respondent/Panchayat has been impleaded as the third defendant. With these facts, now, the petitioner seeks for a direction upon the District Collector/first respondent to take action on the representation, dated 20.03.2016, and to prevent the second respondent from utilizing his private patta land. Since the petitioner has already approached the Civil Court, if there is any threat of encroachment, he can always move the Civil Court seeking for any ad interim relief, by taking out an Interlocutory Application in the pending suit, which will be definitely considered by the Trial Court on merits and in accordance with law. This observation is made, in the light of the fact that the petitioner had earlier obtained a decree in his favour in O.S.Nos.2535, 2719 and 2943 of 2006 on 16.11.2011.

4. With the aforesaid liberty, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The District Collector,
Office of District Collector,
Coimbatore District.
2. The President,
Somayampalayam Panchayat,
Bharathiyar University Post,
Coimbatore - 641 046.

+1cc to Mr.N.Ponraj, Advocate, S.R.No.18477

+1cc to the Government Pleader, S.R.No.18677

Writ Petition No.10959 of 2016

sns (CO)
srg (28/03/2016)



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