

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

**W.P.No.14574 of 2010 and
M.P.No.1 of 2010**

G.Jeffrey

...Petitioner

-Vs-

1. The Executive Officer,
Valparai Third Grade Municipality,
Valparai-641 127,
Coimbatore District.

2.The District Collector,
Coimbatore District,
Coimbatore-18.

3. M/s.Bombay Burmah Trading
Corporation Ltd., rep. By its
General Manager Mudis,
Valparai Taluk,
(impleaded as per order dated 25.11.2010
in M.P.No.2/10)

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus forbearing the respondents herein from interfering with the peaceful possession and enjoyment of the property measuring 3 cents in Door No.15/148 Mudis Town, Valparai Taluk, Coimbatore District in the guise of constructing a public latrine without following the procedure established by law by considering the representation dated 30.06.2010.

For Petitioner : Mr.N.Manokaran
For Respondents : Mr.P.Sanjay Gandhi, AGP

ORDER

The prayer in this writ petition is for a writ of mandamus forbearing the respondents herein from interfering with the peaceful possession and enjoyment of the property measuring 3 cents in Door No.15/148, Mudis Town, Valparai Taluk, Coimbatore District in the guise of constructing a public latrine without following the procedure established by law, by considering the representation dated 30.06.2010.

2. The grievance of the petitioner is that the subject land of 3 cents was allotted to the petitioner long back and they have been in possession and enjoyment of the same for very long years. Since some dispute arises between the petitioner and the 3rd respondent claiming ownership of the land, civil proceedings were initiated and ultimately, in S.A.No.851 of 2009, this Court in **G.Jeffery Vs. Bombay Burmah Trading Corpn, Ltd.**, reported in **2013 (2) TNCJ 965 (Mad)** has remanded the matter back to the First Appellate Court for reconsideration by giving due opportunity to both sides to adduce additional, documentary and oral evidences, in order to substantiate

their respective pleas and to establish their rights.

3. Since the very same issue of ownership in the subject land has already been referred to the Civil Court and rightly, the Civil Court alone has to decide the said controversy of title between the parties i.e., petitioner and the 3rd respondent herein.

4. However, the petitioner has come out with this writ petition as the 1st respondent is trying to encroach upon the subject land for construction of latrine for which the 1st respondent has no right. This Court, at the time of initial hearing has granted interim order of status quo and the same is continuing.

5. The 1st respondent has filed a counter. Quoting the same, the learned Additional Government Pleader appearing for the respondents invites the attention of the Court to paragraph 6 of the counter which reads thus:

“The allegations in paragraph 5 are denied. The allegation that the 1st respondent made an attempt to interfere with the petitioner's possession and enjoyment of the property in the guise of constructing a public latrine is denied. The further allegation that the land where the public latrine is being constructed is subject matter of

second appeal in S.A.No.851/09 is incorrect. The further allegation that the 1st respondent has gone to the extent of demolishing the petitioner's property and started excavation work on 20.06.2010 is false and is denied.”

6. Since the 1st respondent has denied the fact that they are making attempts for construction of public latrines in the land which is claimed by the petitioner, all these issues can be decided by the civil court where the parties have already been, by way of the remand order passed by this Court referred to above.

7. In view of the aforesaid fact, this Court is of the view that the First Appellate Court viz., Sub Court Pollachi will take up the issue as directed by this Court in S.A.No.851 of 2009 dated 26.3.2013 and decide the issue in accordance with law. If it has already been decided, based on the outcome of the decision to be rendered by the Civil Court, the petitioner can establish his claim and thereby can protect his interest from any interference of the 1st respondent.

8. Therefore, the 1st respondent shall not interfere with the possession and enjoyment of the subject land of the petitioner i.e., 3 cents in Door No.15/148 Mudis Town, Valparai Taluk, Coimbatore

District till the finality is reached on the dispute between the petitioner and the 3rd respondent from the competent civil court as has been referred to above and thereafter, once the civil court decides the issue and it reached the finality, it is open to the 1st respondent to act accordingly, in accordance with law.

9. With this observation and direction, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Index: Yes/No
Internet: Yes/No
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17.10.2016

To

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