



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.03.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE MR. JUSTICE C.T.SELVAM

W.A.(MD)No.440 of 2016

and

CMP.(MD)No.3127 of 2016

in

W.P.(MD)No.9423 of 2006

1.M.Jamsith Batcha

2.M.Anwar Batcha

.. Appellants / Petitioners

Vs.

1.The Commissioner,
Kumbakonam Municipality,
Kumbakonam,
Tanjore District.

2.A.Amir John

3.K.A.Ismath Batcha

.. Respondents / Respondents

PRAYER: The Writ Appeal is filed under Clause 15 of Letters Patent against the order of this Court, dated 04.10.2007 in W.P.(MD)No.9423 of 2006.

Prayer in WP(MD). 9423/ 2006 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, calling for the records relating to the impugned order of the 1st respondent in Ka.Ma.No. 372/06/D2- Oo. Order No. 372/06/D2 dated 27/06/2006 and quash the same.

For Appellants : Mr.D.Rajendran

For R1 : Mr.VR.Shanmuganathan
Special Government Pleader

For R2&R3 : Mr.M.R.S.Prabhu for
Mr.V.K.Vijayaraghavan

JUDGMENT

(Judgment of this Court was delivered by S.MANIKUMAR, J.)

Material on record discloses that the appellants have filed W.P. (MD)No.9423 of 2006 for a writ of Certiorari to quash the order of the Commissioner, Kumbakonam Municipality in proceedings Ka.Ma.No.372/06/D2- Oo.Order No.372/06/D2, dated 27.06.2006.

2. Adverting to the submissions and going through the material on record, vide order, dated 04.10.2007, in W.P.(MD)No.9423 of 2006, the writ Court, at paragraph Nos.3 and 4, has ordered as hereunder:-



"3.It is admitted that the petitioner had already filed a civil suit in O.S.No.441 of 2006 on the file of the learned Principal District Munsif Court, Kumbakonam praying for permanent injunction restraining the respondents 2 and 3 herein from putting up any construction and also for a mandatory injunction to direct the respondents 2 and 3 to remove the construction. Pending suit the petitioner also had the benefit of interim injunction in I.A.No.646 of 2006 in O.S.No.441 of 2006. However the injunction was vacated, at the instance of respondents 2 and 3, by an order dated 07-08-2007. Therefore there is a superstructure as on date existing in the property and hence the question of cancellation of building plan approval granted in favour of the second and third respondents does not arise.

4.Moreover it is a case where the petitioner as well as the respondents 2 and 3 make rival claims as to title to the property in question. Therefore it is a matter which should be decided only by the civil court. The parties are already before the civil court. Therefore this writ petition is dismissed leaving it open to the petitioner to work out his rights in the civil suit itself. No costs. Consequently, connected M.P.Nos 2 to 4 are closed."

3.Though the appellants have assailed the correctness of the order made in the writ petition on several grounds, material on record discloses that a suit in O.S.No.441 of 2006 on the file of the learned Principal District Munsif Court, Kumbakonam has been filed by the appellants, praying for an injunction restraining the respondents 2 and 3 herein, from putting up of a construction and also for a mandatory injunction to direct the respondents 2 and 3 to remove the construction. Pending disposal of the suit, they have also filed I.A.No.646 of 2006 in O.S.No.441 of 2006.

4.Having regard to the above averments and finding that there is already a superstructure existing in the property, the writ court has declined to grant the prayer sought for, leaving it open to the petitioner to work out his remedy before the Civil Court. As the appellants have sought to vindicate a civil right, by way of a writ petition under Article 226 of the Constitution of India, the same has rightly been declined by the writ Court. The impugned order does not warrant any interference.

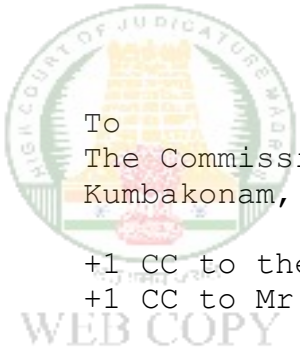
5.In the result, the writ appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar (P&A)

/True copy/

Sub Assistant Registrar



To
The Commissioner, Kumbakonam Municipality,
Kumbakonam, Tanjore District.

+1 CC to the Special Government Pleader, SR No.16758

+1 CC to Mr.R.Devaraj, Advocate, SR No.16780

W.A. (MD) No.440 of 2016
and
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in
W.P. (MD) No.9423 of 2006

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