



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.07.2016

CORAM

THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.P.(MD) No.11315 of 2016

and

WMP(MD)No.8668 of 2016

R.Arumugam

.. Petitioner

vs.

1.The District Collector,
Sivagangai District,
Sivagangai.

2.The Tahsildar,
Devakottai Taluk,
Devakottai.

3.The Commissioner,
Devakottai Municipality,
Sivagangai District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the respondents to consider the petitioner's representation dated 08.06.2016 and same not to put up any construction in the petitioner's property in which of extent of 36.60 cents in situated at Town Survey Ward A Block No.9 Town Survey No.26 6th Street Ram Nagar Devakottai Sivagangai District.

For Petitioner : Mr.K.Periyakaruppan
for

Mr.V.Muthukamatchi

For R1 & R2 : Mr.S.Kumar
Additional Government Pleader

For R3 : Mr.H.Mohamed Imran

O R D E R

Heard the Learned counsel for the Petitioner; the Learned Additional Government Pleader appearing for the Respondent Nos.1 and 2 and the Learned Counsel for the Respondent No.3.

2.By consent, the writ petition is taken up for final disposal.



3.No Counter is filed on behalf of the respondents.

4.According to the petitioner, he has filed the present writ petition praying for passing of an order by this Court in directing the Respondents to consider his representation, dated 08.06.2016 etc.

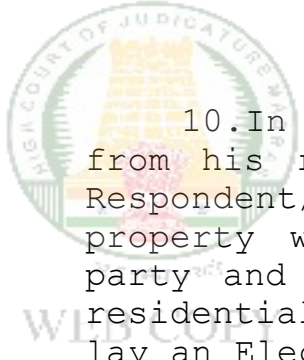
5.The Learned Counsel for the Petitioner urges before this Court that the First Respondent/District Collector, has no *locus standi* without initiating acquisition proceedings to survey the petitioner's land for the purpose of construction of Electric Burial Ground in the residential area.

6.The Learned Counsel for the Petitioner takes a plea that from the date of purchase, the petitioner is the owner of the property and also he filed a Civil Suit in O.S.No.76 of 2014 against the Third Respondent/Commissioner, Devakottai Municipality, Sivagangai District seeking a relief of permanent injunction and the same is pending for adjudication as on date.

7.The prime stand taken on behalf of the Petitioner is that the subject matter of the property is purely a private one and that being the fact situation, without initiating any acquisition proceedings in regard to the petitioner's property, all of a sudden, the Second Respondent and his officials had surveyed the petitioner's land and they are taking steps to construct the Electric Burial Ground in Town Survey No.26, 6th Street, Ram Nagar, Devakottai, Sivagangai District and it is a clear abuse of process under Law.

8.At this juncture, this Court, very rightly points out that the petitioner had filed O.S.No.76 of 2014 on the file of Sub Court, Devakottai against the Commissioner, Devakottai Municipality, Sivagangai District, as defendant (Third Respondent in the Writ Petition), wherein he had sought a relief of permanent injunction against the Municipality, in respect of the suit property. Admittedly, the suit in O.S.No.76 of 2014 is pending as on date before the trial Court. When that be the fact situation, the petitioner has thought it fit to project a representation on 08.06.2016 addressed to the First Respondent/District Collector, Sivagangai District, seeking for cancellation of the decision to form an Electric Crematorium. It appears that the Third Respondent/Municipality had filed I.A.No.69 of 2016 to set aside the *exparte* decree.

9.The specific plea of the petitioner is that the suit property at any point of time, does not belong to the Third Respondent/Municipality and also that the suit in O.S.No.76 of 2014 is pending on the file of the trial Court.



10. In fact, the categorical stand of the petitioner as seen from his representation dated 08.06.2016 addressed to the First Respondent/District Collector, Sivagangai District, is that the property was purchased through proper documents from a private party and in the said property, where in the thickly populated residential area, he came to know that an endeavour was made to lay an Electric Crematorium.

11. Ordinarily, a litigant is not entitled to seek parallel remedies viz., a remedy before one Forum and another remedy before another competent Forum. It appears that I.A.No.69 of 2016 filed by the Third Respondent/Municipality to set aside the exparte decree in O.S.No.76 of 2014 came up for hearing before the trial Court on 01.07.2016.

12. Considering the fact that the petitioner as plaintiff had filed a suit in O.S.No.76 of 2014 on the file of the Learned Sub Judge, Devakottai, wherein an exparte decree was passed and later I.A.No.69 of 2016 was projected by the Third Respondent/Municipality to set aside the exparte decree and the same is pending for consideration/adjudication before the trial Court and the last date of hearing was on 01.07.2016. As such, this Court, is of the considered opinion that it is not open to the Petitioner to seek the arms of this Court praying for a relief to consider his representation dated 08.06.2016. In short, when I.A.No.69 of 2016 in O.S.No.76 of 2016 on the file of trial Court, is pending, the Petitioner in Law is estopped from seeking a relief to consider his representation, dated 08.06.2016. The proper course of action for the Petitioner, in the considered opinion of this Court is to approach the trial Court, where I.A.No.69 of 2016 in O.S.No.76 of 2016 is pending and to seek appropriate remedy in the manner known to Law and in accordance with Law. Without resorting to such procedure or not opting to avail such remedy, the petitioner has filed the present writ petition to consider the representation dated 08.06.2016, which is not to be encouraged by this Court to maintain comity of Judicial discipline. Viewed in that perspective, the writ petition fails.

13. In fine, the Writ Petitioner is dismissed leaving the parties to bear their own costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-
Assistant Registrar (CS-II)

/TRUE COPY/



To:

- 1.The District Collector,
Sivagangai District,
Sivagangai.
- 2.The Tahsildar,
Devakottai Taluk,
Devakottai.
- 3.The Commissioner,
Devakottai Municipality,
Sivagangai District.

+1cc to Mr.V.MUTHUKAMATCHI, ADVOCATE, SR NO: 38289
+1cc to Mr.H.MOHAMED IMRAN,ADVOCATE SR.NO. 38103
+1cc to M/S.THE SPECIAL GOVERNMENT PLEADER, SR NO: 37917

JA-DB/09.08.2016-4P:7C

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