

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 06.12.2017
CORAM:
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
W.P.No.5015 of 2012
and
M.P.No.1 of 2012

K.Thavamani

.. Petitioner

Vs.

The Chief Executive Officer,
Wellington Cantonment,
Wellington,
Nilgiris District.

.. Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the respondent to remove its men and materials from the petitioner's land and all encroachment activities on the petitioner's land.

For Petitioner :Mr.N.Surya Senthil
For Respondent :Mr.M.Vijayan for M/s.King
and Patridge

ORDER

The petitioner has come forward with the above Writ Petition praying for issuance of a Writ of Mandamus to direct the respondent to remove its men and materials from the petitioner's land and all encroachment activities on the petitioner's land.

2. It is the case of the petitioner that he has purchased 3.5 cents of land comprised in R.S.No.344/1A1A2 by virtue of sale deed dated 15.12.2005 registered as Document No.2034/2005 in the Sub-Registrar Office, Coonoor. He has purchased several properties in and around that area by different sale deeds. The respondent is planning to lay a road in the petitioner's lands and also give a sewage connection through the petitioner's land, both being for a private person's land situated beyond the petitioner's land. According to the petitioner, Tahsildar, Koonoor has issued patta and chitta for the above mentioned properties in the name of the petitioner on 08.02.2010, vide Document No.D2010/82 and that the said private person's land already had road access through a road running right in front of the said land and the petitioner told the respondent that they could give the sewage connection directly through this already existing road, instead of illegally encroaching on the petitioner's land. That apart, the respondents cannot let in any pipeline for the purpose of sewerage or water connection and that the respondents. The said action of the respondent, encroaching upon the property, is illegal and it is to be

interfered with and that the respondent shall be directed to remove the men and materials from the petitioner's lands.

3. The contention of the respondent is that the petitioner has purchased sale deed of the year 2005 and that the property in question belonged to the respondent and that for public purpose, the water and sewerage connection pipes are laid. The petitioner has not produced any evidence to show that he is the owner of the property(ies) and that the sale deed by itself will not establish the case, as the petitioner has to establish from the parent document that the erstwhile owners who have sold the properties, had a power to sell the pathway, which according to the petitioner is not the pathway and that it belonged to the petitioner. Since there is interim order of this Court dated 02.03.2012, which had been extended from time to time, the respondent submitted that no work has been carried out and that the place is used as mud road and pedestrians are walking through that area. It is further submitted by the respondent that the petitioner has to establish his title and in that event, the respondent will not carry out any activities as stated by the petitioner.

4. Heard both sides and perused the materials available on record.

5. It is the admitted case of the petitioner that he has produced document of the year 2005 and subsequently, to show that he has purchased several properties. Whether the so-called road was a road or a part of the petitioner's property, needs to be established by seeking declaration or such other relief from the Civil Court and without that, the petitioner cannot contend that he has got right over the property in question. Since the petitioner had the benefit of interim order and that as on date, the place is used as pathway, it is open for the petitioner to approach the Civil Court by seeking necessary relief.

6. The petitioner is given one month's time from the date of receipt of a copy of this order, to approach the Civil Court and that the plea of the petitioner shall be entertained by way of filing of suit and the Civil Court is expected to take up the matter without going into the question of limitation and decide the issue on merits, as the matter is sub-judice before this Court. If any such suit is filed, the appropriate Court is expected to take up the matter and decide the same as expeditiously as possible, without adjourning the matter beyond 15 working days at any point of time and till such time the issue is decided by the Civil Court, the respondent shall maintain status-quo as on today and shall not carry on any work in the disputed site in question.

7. With the above observations and directions, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

CS
To

The Chief Executive Officer,
Wellington Cantonment,
Wellington,
Nilgiris District.

+1 cc to M/s.N.Surya Senthil Advocate sr 87336
+1 cc to M/s.King & Patridge Advocate sr 86637

W.P.No.5015 of 2012

aa08/01/2018



WEB COPY