

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.08.2017

CORAM

THE HONOURABLE MR.JUSTICE M. DHANDAPANI

W.P.No.23272 of 2004 &
W.M.P.Nos.28161 of 2004 & 1536 of 2008

M.Dharmalingam

... Petitioner

-VS-

1.The District Collector,
Krishnagiri District,
Krishnagiri.

2.The Block Development Officer,
Uthangarai,
Krishnagiri District.

3.The District Elementary Educational Officer,
Krishnagiri.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus to direct the respondents to remove the encroachments in the petitioner's patta land in Survey No.35/1, Narchampatti Village, Singarapettai Post, Uthangarai Taluk, Krishnagiri District, measuring 2.30 acres.

For Petitioner : Mr.R.Prem Narayan

For Respondents : Mr.A.Zakkhir Hussain
Government Advocate for R1 and R3

Mr.P.S.Jayakumar for R2

O R D E R

The petitioner has filed this Writ Petition for issuance of a Writ of Mandamus for a direction to the respondents to remove the encroachments in his patta land in Survey No.35/1, Narchampatti Village, Singarapettai Post, Uthangarai Taluk, Krishnagiri District, measuring 2.30 acres.

2. Heard Mr.R.Prem Narayan, learned counsel appearing for the petitioner, Mr.A.Zakkhir Hussain, learned Government Advocate appearing for the first and third respondents and Mr.P.S.Jayakumar, learned counsel appearing for the second respondent.

3. The petitioner is the owner of the agricultural land situated in Survey No.35/1, Narchampatti Village, Singarapettai Post, Uthangarai Taluk, Krishnagiri District and patta No.86 also stands in his name. The respondents decided to construct a primary school adjacent to his agricultural land under "Sarva Shiksha Abhiyan Scheme" and engaged a contractor for construction of School. The Writ Petition came to be filed before this Court on the allegation that the contractor started encroaching his patta land and attempting to lay down a foundation stone for compound wall and construction of classrooms. Against which, the petitioner made a representation to the respondents on 07.02.2004 and 26.07.2004. Against the inaction of the respondents, the present Writ Petition is filed.

4. Mr.P.S.Jayakumar, learned counsel appearing for the second respondent relying the counter affidavit submits that the proposed construction of the School is constructed in Survey No.35/8 and not in Survey No.35/1. Survey No.35/1 is belonging to the petitioner and the second respondent has never made an attempt to encroach upon the property for construction of the School. The respondents also taken steps to measure the property and accordingly they measured the property on 19.07.2004. However, the petitioner was not present at that point of time. After measurement, they started the construction.

5. On perusal of the affidavit, it is seen that it is a purely a civil dispute and approaching this Court under Article 226 of the Constitution of India is not maintainable. It is open to the petitioner to approach the civil forum for adjudicating his claim, when the respondent filed a counter saying that they are not constructing in Survey No.35/1 and they are constructing only in Survey No.35/8. Since there is a disputed question of facts, which cannot be decided under Article 226 of Constitution of India and it is only for the Civil Court has to decide.

6. Accordingly, the Writ Petition is dismissed. It is open to the petitioner to work out his remedy before appropriate forum. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

r n s

To

1.The District Collector,
Krishnagiri District,
Krishnagiri.

2.The Block Development Officer,
Uthangarai,
Krishnagiri District.

3.The District Elementary Educational Officer,
Krishnagiri.

+1cc to Mr.R.Prem narayan, Advocate SR.No.59512
+1cc to Government Pleader SR.No.59936

W.P.No.23272 of 2004 &
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KJ(CO)
GN(14/09/2017)



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