



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.10.2017

CORAM:

**THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE**

**W.P. (MD)No.19431 of 2017
and
W.M.P. (MD)No.15732 of 2017**

K.Jeyaraj : Petitioner

-Vs-

1. The District Collector,
Collector Office Campus,
Tuticorin District.
2. The Tahsildar,
Office of the Tahsildar,
Srivaikundam Taluk,
Tuticorin District.
3. The Executive Officer,
Special Grade Panchayat,
Sawyerpuram Village,
Srivaikundam Taluk,
Tuticorin District.
- 4.Jeyachitra

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the third Respondent in his proceedings bearing Na.Ka.No.138/2017, dated 06.09.2017 and quash the same and forbear the Respondents from taking any action to remove the compound wall belonging to the Petitioner constructed within his premises to an extent of 4.75 Cents comprised in S.No.302/11 situated in Sawyerpuram Village, Srivaikundam Taluk, Tuticorin District.

For Petitioner : Mr.S.Kadarkarai

For Respondents 1to3 : Mr.T.R.Janarthanan,
Additional Government Pleader

**ORDER**

[Order of the Court was made by **M.VENUGOPAL, J.**]

The Petitioner has filed the instant Writ Petition seeking to call for the records of the third Respondent in his Proceedings in Na.Ka.No.138/2017, dated 06.09.2017 and to quash the same. Further, the Petitioner has sought for passing of an order by this Court in forbearing the Respondents from taking any action to remove the compound wall belonging to him constructed within his premises in an extent of 4.75 Cents comprised in S.No.302/11 situated in Sawyerpuram Village, Srivaikundam Taluk, Tuticorin District.

2. Heard the Learned Counsel for the Petitioner and the Learned Additional Government Pleader appearing for the Respondents 1 to 3.

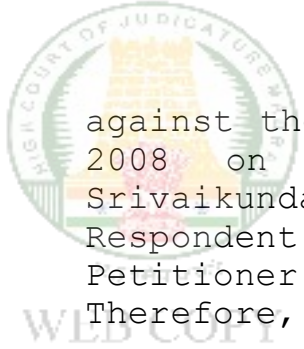
3. According to the Learned Counsel for the Petitioner, the property measuring an extent of 4.75 Cents in Survey No.302/11 in Sawyerpuram Village was purchased by the Petitioner from (i) Rajkumar and (ii) Mookandi, through Sale Deed dated 17.09.1980. Further, an extent of one and half Cents in Survey No.302/2 was purchased by the Petitioner from Sri.Kanmani, S/o.Subbiah, by virtue of a Sale Deed dated 23.01.2004. As a matter of fact, the Petitioner intended to construct a compound wall and pursuant thereto, projected an application and that the Third Respondent/Executive Officer, Special Grade Panchayat, Sawyerpuram Village, Srivaikundam Taluk, Tuticorin District, had accorded an approval through proceedings dated 04.02.2003.

4. The categorical case of the Petitioner is that the Third Respondent had issued a notice dated 25.07.2003 to the Petitioner seeking to demolish the Petitioner's compound wall and assailing the same, the Petitioner laid a civil suit in O.S.No.165 of 2003 on the file of Learned District Munsif, Srivaikundam, which was, ultimately, dismissed on 20.07.2004. It comes to be known that the Third Respondent had issued a notice dated 13.03.2007 requiring to demolish the Petitioner's compound wall and the Petitioner was performed to file another suit in O.S.No.169 of 2008 on the file of Learned Principal District Munsif, Srivaikundam, which also ended in dismissal on 11.04.2016.

5. When that be the fact situation, it transpires that the Fourth Respondent herein (Jeyachitra) had filed a Writ Petition in W.P.(MD)No.12180 of 2017, wherein a relief was sought for issuance of direction to the Respondents 1 to 3 therein to remove the encroachment put up by the fourth Respondent therein on the basis of representation dated 28.04.2017, which was disposed of by this Court on 24.07.2017 on merits, of course, in accordance with law.

<https://hcservices.ecourts.gov.in/hcservices/>

6. At this stage, the Learned Counsel for the Petitioner proceeds to point out that the Writ Petitioner filed an Appeal



against the Judgment and Decree dated 11.04.2016 in O.S.No.169 of 2008 on the file of Learned Principal District Munsif, Srivaikundam and during the pendency of the said Appeal, the Third Respondent had passed the impugned proceedings against the Petitioner on 06.09.2017 to remove the Petitioner's compound wall. Therefore, the Petitioner has filed the present Writ Petition.

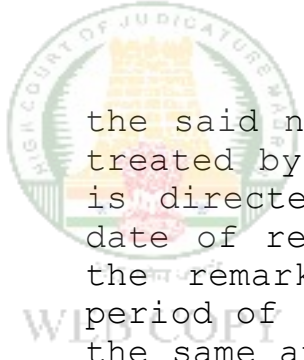
7. At this stage, this Court points out the order of the Division Bench of this Court in W.P.(MD)No.12180 of 2017 filed by one Jeyachitra as Petitioner against the Respondents 1 to 3 therein and also the Fourth Respondent [the present Writ Petitioner in W.P.(MD)No.19431 of 2017] and this Court on 24.07.2017, at Paragraph No.3, had observed the following:

"We direct the third respondent to consider and dispose of the representation submitted by the petitioner dated 28 April, 2017 on merits and as per law and more particularly, in the light of the decree in O.S.No.165 of 2003, in case the same has already been attained finality, after issuing notice to the fourth respondent. Such exercise shall be completed, within a period of three months from the date of receipt of a copy of this order.

and disposed of the said Writ Petition issuing necessary direction.

8. It is to be noted that the Fourth Respondent in W.P.(MD) No.12180 of 2017 [viz., Jeyaraj, the Writ Petitioner in the present Writ Petition in W.P.(MD)No.19431 of 2017] was not issued with the notice as per direction issued. However, the Third Respondent had issued a notice on 06.09.2017 straightaway requiring the Petitioner to remove the encroachment within seven days of receipt of said notice.

9. A mere running of the eye over the contents of notice dated 06.09.2017 of the Third Respondent issued to the Writ Petitioner [Fourth Respondent in W.P.(MD)No.12180 of 2017] patently indicates that in Reference No.1, there was a mention of the order passed by this Court in W.P.(MD)No.12180 of 2017, dated 24.07.2017. In spite of the fact that the Third Respondent had referred to W.P.(MD) No.12180 of 2017, wherein an order was passed on 24.07.2017, yet, this Court is of the considered view that the Third Respondent had not adhered to the directions issued by this Court in W.P.(MD) No.12180 of 2017, dated 24.07.2017, wherein the present Writ Petitioner [Fourth Respondent in W.P.(MD)No.12180 of 2017] was directed to give notice. But the said exercise was not done by the Third Respondent. As such, this Court unhesitatingly holds that the impugned notice dated 06.09.2017 of the Third Respondent proceeds with legal infirmities in Law. Resultantly, this Court, to prevent an aberration of Justice, interferes with the said order and instead of setting aside that order, simply directs that



the said notice dated 06.09.2017 of the Third Respondent shall be treated by the Petitioner as show cause notice and the Petitioner is directed to offer his explanation within two weeks from the date of receipt of copy of this order. Soon after the receipt of the remarks/objections/explanation of the Petitioner, within a period of four weeks, the Third Respondent is directed to consider the same and pass a reasoned speaking order on merits, by adhering to the Principles of Natural Justice. Liberty is granted to the Petitioner to raise all Factual and Legal pleas before the Third Respondent, who shall, at the time of passing the final orders in question, advert to the every Factual/Legal plea and deal with the same in a free, fair, just, impartial, unbiased and dispassionate manner, uninfluenced and untrammelled with any of the observations made by this Court in this Writ Petition. Till final orders are passed by the Third Respondent in the subject matter in issue, the Petitioner shall not be disturbed from his possession in the property in question.

10. With the aforesaid observation(s)/direction(s), the Writ Petition stands disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
Collector Office Campus,
Tuticorin District.
2. The Tahsildar,
Office of the Tahsildar,
Srivaikundam Taluk,
Tuticorin District.
3. The Executive Officer,
Special Grade Panchayat,
Sawyerpuram Village,
Srivaikundam Taluk,
Tuticorin District.

+ 1 cc TO Mr.S.Kadarkarai , Advocate in SR No. 83774
+1cc to The Special Government Pleader in SR.No.83634

SML

AE/KP/SAR4/02.11.2017/4P/6C