



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.11.2017

CORAM:

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

**W.P. (MD) No.1481 of 2016
and
W.M.P. (MD) Nos.1244 and 1245 of 2016**

K.A.Bose : Petitioner

-Vs-

1. The District Collector,
Madurai,
Madurai District.

2. The Revenue Divisional Officer,
Madurai,
Madurai District.

3. The Tahsildar,
Vadipatty Taluk,
Vadipatty,
Madurai District.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, to call for the records relating to the impugned order passed by the 2nd Respondent in his proceedings in Na.Ka.No.2863/2015/M, dated 04.01.2016 and to quash the same.

For Petitioner : Mr.S.C.Herold Singh

For Respondents : Mr.M.Govindan
Special Government Pleader

O R D E R

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

This Writ Petition has been filed seeking issuance of a Writ of Certiorari, calling for the records relating to the impugned order passed by the 2nd Respondent in his proceedings in Na.Ka.No.2863/2015/M, dated 04.01.2016 and to quash the same.



2. Heard both sides. No counter is filed on behalf of the Respondents 1 to 3.

3. By consent, the main Writ Petition itself is taken up for final disposal.

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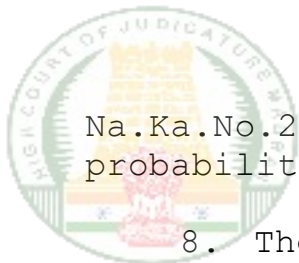
4. According to the Petitioner, the Petitioner is the owner of the property bearing Survey No.163/2 of Devaseri Village, Vadipatty Taluk, Madurai District, admeasuring 110 sq.mtr (1193 sq.ft). The said house property along with vacant site situated in Survey No.163/2 and other 8 items of properties were purchased by his father K.Andiappa Gounder on 24.04.1951 from one Alagarswamy Iyengar and others for valuable consideration by means of a registered sale deed. The above said house property bearing Survey No.163/2 was shown as one of the 2nd item of property in the said sale deed, dated 24.04.1951. Since his father died on 25.03.1985, the property devolved on the Legal Heirs of his father. As such, the property is in possession and enjoyment of the Petitioner along with his brothers Nallu and Tamilselvam.

5. The stand of the Petitioner is that there was a tiled house constructed by his father available in the said property and since the same was in a dilapidated condition, he was forced to renovate the same by demolishing the ruined walls. While carrying out the renovation work, the adjacent owner's brother, one Baskaran created problem and he tried to trespass into the Petitioner's property, which resulted in lodging of a complaint by the Petitioner before the Palamedu Police Station. The complaint being given before the Palamedu Police Station alleging that he had encroached upon the common pathway, the matter was referred to the Revenue Divisional Officer, Madurai District/2nd Respondent. On verification of the same, the Revenue Divisional Officer, Madurai had taken up the issue under Section 145 of Cr.P.C. Thereafter, the Revenue Divisional Officer had filed a report dated 14.09.2015 stating that if there is any encroachment, action would be taken as per G.O.Ms.No.540, dated 04.12.2014, which was communicated to the Tahsildar concerned.

6. The adjacent owner's brother Baskaran had filed a suit in O.S.No.131 of 2014, on the file of the Learned District Munsif-cum-Judicial Magistrate, Vadipatti together with an Interlocutory Application bearing I.A.No.376 of 2014, seeking permanent injunction. The said application came to be dismissed on 13.03.2015. In fact, the said Baskaran could not make out a *prima facie* case for injunction. In the main suit, the relief sought for is with regard to the declaratory relief in respect of the right of pathway and mandatory prayer is to remove the bore-well sunked in the Petitioner's property.

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

7. The main grievance of the Petitioner is that the second Respondent/RDO, Madurai had issue a impugned order, in



Na.Ka.No.2863/2015/M, dated 04.01.2016, without considering the probabilities of the case.

8. The Learned counsel for the Petitioner submits that the second Respondent ought to have seen that after the demise of the Petitioner's father, the Petitioner is in possession and enjoyment of the said property together with his wife and children. Furthermore, the Petitioner's brother had entered into a partition and the said property was allotted to the Petitioner and that the Petitioner had approached the Revenue Authorities and obtained a patta, bearing Registration No.1067 in his favour. The core contention of the Petitioner is that the second Respondent ought to have seen that there is no encroachment at all in the property in question for invoking the ingredients of G.O.Ms.No.540, dated 04.12.2014.

9. At this juncture, this Court has perused the Official Memorandum, dated 04.01.2016 addressed to the second Respondent/Tahsildar, Vadipatti Taluk (with a copy being marked to Baskaran and the present Petitioner). In the said notice of the second Respondent/Revenue Divisional Officer, Madurai, it is mentioned that on examination of N.Baskaran and Others and R.Bose and others of Thevaseri Village, Vadipatti Circle, Madurai, it was found that there was huge controversy/issue pertaining to the encroachment and the third Respondent/Tahsildar, Vadipatti Taluk was directed to register the same in the Encroachment Register as per G.O.Ms.No.540, dated 04.12.2014 and to remove the encroachment. Thereafter, the third Respondent/Tahsildar was required to submit a report to the second Respondent in this regard.

10. By way of response, the Learned Special Government Pleader appearing for the Respondents 1 to 3 submits that the said encroachment would be removed as per G.O.Ms.No.540, dated 04.12.2014, after following the procedure and ingredients mentioned in the above said Government Order.

11. Recording the above said fact that the third Respondent/Tahsildar will take necessary steps to follow the ingredients of G.O.Ms.No.540, dated 04.12.2014, this Court, without going into the merits of the subject-matter in issue, simpliciter, directs the third Respondent to invoke the ingredients of G.O.Ms.No.540, dated 04.12.2014 in true letter and spirit and to take such action as it deems fit and proper, of course, after following the Principles of Natural Justice in regard to the issuance of notice to the Petitioner and others concerned.

<https://hcservices.ecourts.gov.in/hcservices/> 12. The third Respondent shall maintain *status quo* prevailing as on today.



13. With the above said observation(s) and direction(s) the Writ Petition stands disposed of. No Costs. Consequently, connected Miscellaneous Petitions are closed.

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Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
Madurai,
Madurai District.
2. The Revenue Divisional Officer,
Madurai,
Madurai District.
3. The Tahsildar,
Vadipatty Taluk,
Vadipatty,
Madurai District.

+ 1 cc TO The Special Government Pleader in SR No. 87813

PJL

AE/KK/SAR2/05.12.2017/4P/5C

Order made in
W.P. (MD) No.1481 of 2016
Dated: 16.11.2017