



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.04.2017

CORAM :

THE HONOURABLE MRS.JUSTICE J. NISHA BANU

W.P.(MD) No.22986 of 2016

and WMP(MD) Nos. 1040, 16462 to 16464 of 2016

Murugesan

... Petitioner

Vs.

01.The District Collector,
Dindigul,Dindugul District.

02.The District Forest Officer,
Dindigul Forest Range,
Dindigul District.

03.Murugaiah

... Respondents

PRAYER: The Writ Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the 2nd respondent in Na.Ka.No.4514/2016 T dated 10.11.2016 and quash the same as illegal.

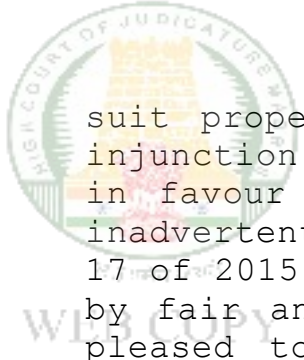
For Petitioner	: Mr.R.J.Karthick
For R1 & R2	: Mr.R.Anandaraj Government Advocate
For R3	: Mr.K.P.Thiyagarajan

O R D E R

This Writ Petition has been filed for issuance of writ of Certiorarified Mandamus to quash the impugned order passed by the 2nd respondent in Na.Ka.No.4514/2016 T dated 10.11.2016.

2. Heard Mr.R.J.Karthick, learned counsel appearing for the petitioner, Mr.R.Anandaraj, learned Government Advocate appearing for the respondents 1 and 2 and Mr.K.P.Thiyagarajan, learned Advocate appearing for the third respondent.

3. It is averred in the petition that the petitioner and his wife namely Pitchaiammal filed O.S.No.55 of 2013 on the file of the Principal Sub Court, Dindigul for the relief of partition of 1/6th share in the suit scheduled properties situated in Sivanmalai Village, Adiyanoothu Village and other properties as mentioned in the suit. The said suit was filed against one Vijaya and 25 others. As they were trying to encumber and alienate the



suit properties I.A.No.233 of 2014 was filed for the relief of injunction. Pending the said suit, interim injunction was granted in favour of the petitioner and his wife. Since the defendants inadvertently omitted to mention the Survey No.290, I.A.Nos.16 and 17 of 2015 were filed to amend the plaint and petition. On contest by fair and decreetal order dated 8.4.2015, the trial court was pleased to amend the schedule with regard to 1st part wherein Survey No.290 is mentioned.

4. Though the affidavit filed in support of this petition states that amendment petition was allowed in respect of Survey No.290, in fact, the amendment petition was not allowed in respect of Survey No.290 and it has been dismissed as against Survey No.290 and therefore, there was no injunction pending and therefore, based on the opinion of the Government Pleader, the respondent has passed an order stating that since the petition filed by the plaintiff was dismissed the claim of the third respondent can be considered by following the Forest Acts and Rules.

5. The Government Advocate appearing for the respondents 1 and 2 states that in fact amendment in respect of Survey No.290 has not been allowed, against which they have filed a Civil Revision Petition before this Court and no stay has been granted till today and no permission has been granted and in the impugned order it is only stated that the respondent would act as per Act and Rules and therefore, prayed for dismissal of this writ petition.

6. The learned counsel appearing for the third respondent has filed a typed set of documents in which patta granted by the Revenue Department in respect of S.No.290 was also included.

7. I have considered the submissions made by the learned counsel appearing for the petitioner, the learned Government Advocate appearing for the respondents 1 and 2 and the learned counsel appearing for the third respondent and perused the materials placed on record.

8. As rightly pointed out by the learned counsel for the third respondent that the affidavit itself wrongly shows that the petition has been amended and Survey No.290 was included and in such a way the petitioner has misconstrued the order of the court and though it has been stated as against the order of the trial court not amending Survey No.290 a Civil Revision Petition has been filed before this Court, it could not be taken as if Survey No.290 was included.

9. Though this Court is not inclined to entertain this writ petition, to meet the ends of justice, this Court feels that it is appropriate to issue the following direction:



'Whenever the respondents 1 and 2 decide to consider the claim of the third respondent, an opportunity of hearing shall also be given to the petitioner before taking a decision. The objection of the aggrieved persons shall also be heard before passing any order'.

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10. With the above direction, this writ petition is disposed of. No costs. Consequently connected W.M.P.(MD) Nos.1040, 16462, 16463 and 16464 of 2016 are closed.

Sd/-

Assistant Registrar (P&A)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector, Dindigul, Dindugul District.
2. The District Forest Officer, Dindigul Forest Range, Dindigul District.

+2CC to M/S.K.P.Thiagarajan, Advocate, SR.No. 53015
+1CC to M/S.R.J.Karthick, Advocate, SR.No. 52847
+1CC to the Special Government Pleader SR.No. 53125

W.P.(MD) No.22986 of 2016
and

WMP(MD) Nos. 1040, 16462, 10643 and 16464 of 2016
19.04.2017

CM

KK/RSK/SAR 2/27.04.2017/3P/7C