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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.02.2017

CORAM :

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD)No.11538 of 2013

and

M.P(MD)No.1 of 2013

B.Seenivasan

... Petitioner

vs.

1.The District Collector,
Madurai District.

2.The President,
Chettikulam Village Panchayat,
Madurai Taluk,
Madurai District.

... Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Mandamus forbearing the 2nd respondent from in any manner enter into the petitioner's property ad measuring an extent of 1375 sq.ft comprised in S.No. 138/13 in Chettikulam Village in Madurai District for constructing storm water channel and compound wall for the village temple.

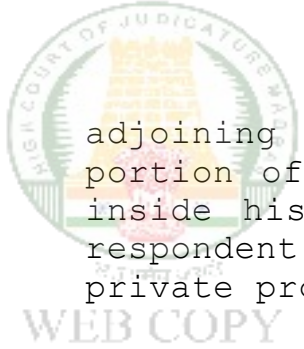
For Petitioner : Mr.Vijay Anand
for Mr.R.Surianarayanan

For 1st Respondent : Mr.T.R.Janarthanam
Additional Government Pleader

For 2nd Respondent : Mr.K.P.Krishnadoss

ORDER

The case of the petitioner is that the property comprised in Survey No.138/13 in Chettikulam Village in Madurai District measuring 1375 sq ft., was purchased by him through a registered sale deed dated 30.07.2012 and he has been in possession and enjoyment of the same from then onwards.



adjoining every private property, he had earmarked the northern portion of his property thereby attempting to put up the channel inside his patta lands. According to the petitioner, the second respondent has no right to put up any construction inside his private property.

3.Learned Additional Government Pleader appearing for the respondents submitted that one Ramachandran had obtained patta for 3 cents under natham settlement scheme and the petitioner had purchased the said property from him. Since the said Ramachandran is not entitled for 3 cents of patta under natham settlement scheme, he has defrauded the Government and thereby he is deemed to be an encroacher.

4.I have given careful consideration to the submissions made by the respective counsels.

5.It is not in dispute that the petitioner's vendor was granted with a patta for three cents of land and that he had purchased the property from the said Ramachandran under a registered sale deed. If at all the respondents feel that the patta was not properly obtained, it was always open to them to take action against the same. It is seen from the counter affidavit that the respondents have not initiated such action and therefore, the submission of the respondents that the petitioner is deemed to be an encroacher cannot be accepted. The petitioner having purchased the said property for a valid consideration under a registered sale deed and that the petitioner's vendor was also given patta for three cents of land, he cannot be at any stretch of imagination, deemed to be an encroacher.

6.The respondents are now trying to put up a storm water channel adjoining the private properties and insofar as the petitioner's property is concerned, they have attempted to lay storm water channel inside his private property. This action of the respondents cannot be allowed to be done in view of the fact that the petitioner has not been put on notice with regard to such laying of storm water channel inside his private property. It is always open to the respondents to put on notice before such an action is taken and if at all, they feel that the storm water channel has to be laid inside the premises of the petitioner, the same can be done only under due process of law.

7.Under these circumstances, the prayer sought for by the petitioner is granted. The second respondent is injuncted from entering into the petitioner's property measuring 1375 sq., feet in Chettikulam Village in Madurai District, for the purpose of constructing storm water channel, without due process of law.



8. With the above observation, the writ petition is disposed of. No costs. Consequently, M.P(MD)No.1 of 2013 is closed.

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/True Copy/

Sd/-

Assistant Registrar(co)

Sub Assistant Registrar

To

1. The District Collector,
Madurai District.

2. The President,
Chettikulam Village Panchayat,
Madurai Taluk,
Madurai District.

+1cc to THE SPECIAL GOVERNMENT PLEADER, SR.NO. 5990

+1cc to M/S.R.Suriyanarayanan, Advocate SR.No.5782

sms

SM:MR:14.02.2017:3p/5c

W.P. (MD) No.11538 of 2013
and
M.P (MD) No.1 of 2013
02.02.2017