

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.P. No.11839 of 2013 &
M.P.No.1 of 2013

- 1.Janaki
- 2.Vigneshwara Prabhu
- 3.Minior Pavithran
S/o.Marimuthu,
Rep. by his natural guardian and mother
Tmt.Janaki.

All are residing at No.38/1,
Kulathupunjai Theru,
Dharapuram Taluk,
Tirupur District.

... Petitioners

Vs.

The Commissioner,
Dharapuram Municipality,
Dharapuram.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to forbear the respondent herein from dispossessing or interfering with the petitioner's peaceful possession of the land comprised in Old T.S.No.703/A42, New Town Survey No.76/1, 76/2, 76/3 measuring to an extent of 10 cents of Chitravuthampalayam Village, Dharapuram, Tirupur District.

For Petitioners : Mr.S.Saravanan

For Respondent : Mr.P.Srinivas, Standing Counsel

O R D E R

This Writ Petition has been filed for issuance of Writ of Mandamus forbearing the respondent from dispossessing and interfering with the petitioner's peaceful possession of the land comprised in Old T.S.No.703/A42, New Town Survey No.76/1, 76/2, 76/3 measuring to an extent of 10 cents of Chitravuthampalayam Village, Dharapuram, Tirupur District.

2. Heard Mr.S.Saravanan, learned counsel for the petitioners; Mr.P.Srinivas, learned Standing Counsel for the respondent and perused the records.

3. The case of the petitioners is that the land in dispute is a Natham poromboke land. It has been in possession of the petitioner's forefathers for long number of years. The petitioner's grandfather constructed a house and obtained electricity service connection and patta was also issued in favour of the petitioner's father.

4. The petitioners would further state that since the respondent attempted to interfere with the petitioner's peaceful possession of the property, first petitioner's father filed O.S.No.30 of 1998 before the Sub Court, Dharapuram, for declaration and for consequential permanent injunction. After trial, the suit was decreed on 18.08.2000 and the appeal preferred by the respondents before the Principal District Court in A.S.No.179 of 2001 was dismissed. Aggrieved by the judgment, the respondent has filed a Second Appeal in S.A.No.131 of 2003. Despite the concurrent finding of the Civil Courts, during the pendency of the Second Appeal on 12.04.2013, the respondent threatened the petitioner to vacate the property. Hence, the representation, dated 17.04.2013 was given, requesting them not to interfere with the peaceful possession and since there was no response, the present Writ Petition.

5. The learned counsel for the petitioner submitted that the Civil Court has already declared the rights of the petitioners and hence, the respondent has no authority to interfere with the possession and enjoyment of the property. The learned counsel for the petitioner submitted that the petitioners were already issued with a patta by the Special Tahsildar, Dharapuram, on 07.01.2016.

6. The learned Standing Counsel for the respondent submitted that if there is any violation of the Civil Court decree, the petitioner can very well file an Execution Petition and the present Writ petition is not maintainable.

7. I am not able to agree with the submission of the learned Standing Counsel, for the reasons that the Civil Court has already declared the rights of the petitioners. Against the concurrent finding, the respondent has preferred a Second Appeal. Though this Court entertained the appeal, however, no interim order was granted in favour of the respondent. Hence, unless the respondent succeeds in the appeal, they have no right

to interfere with the possession and enjoyment of the petitioners.

8. In such view, the petitioners are entitled to succeed in this Writ Petition. Accordingly, the Writ Petition is allowed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

r n s

To

The Commissioner,
Dharapuram Municipality,
Dharapuram.

+lcc to Mr.Saravanan, Advocate, S.R.No.17836

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M.P.No.1 of 2013

GSP (28/03/2018)

सत्यमेव जयते

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