



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.02.2018

CORAM:

**THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI**

**WP. (MD) No.3625 of 2018
and
W.M.P. (MD) Nos.3756 and 3757 of 2018**

S.Seiyyad Mohammed Sulaiman
@ S.S.M.Sulaiman

... Petitioner

-VS-

1.The District Collector,
Kanyakumari District.

2.The Tahsildar,
Agasteeswaram Taluk,
Nagercoil.

3.The Commissioner,
Nagercoil Municipality,
Nagercoil.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified Mandamus, to call for the records of the proceedings by the 2nd respondent in No.Na.Ka.B1/7494/2017 dated 06.11.2017 quash the same and consequently directing the respondents not to disturb the peaceful possession of the above said property without following due procedure of law.

For Petitioner : Mr.Rm.Arun Swaminathan

For Respondents : Mr.D.Muruganandam, AGP for
RR1 and 2
Mr.Aathimoolapandian for R3

**O R D E R**

(Order of the Court was made by **T.S.SIVAGNANAM, J.**)

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Heard Mr.VRm.Arun Swaminathan, learned counsel for the petitioner and Mr.D.Muruganandam, learned AGP appearing for RR1 and 2 and Mr.Aathimoolapandian, learned counsel appearing for the 3rd respondent.

2.This writ petition has been filed to set aside the proceedings issued by the second respondent dated 06.11.2017. What we find is that the impugned proceedings is only an internal communication between the second and third respondents with regard to the alleged encroachment in S.No.12/29-4.

3.According to the complaint given by the petitioner's father, Mr.Sheik Iliyas vide petition dated 21.06.2017, the petitioner is stated to have encroached into the said property, which is a government property.

4.It is not disputed that there is civil litigation between the petitioner and his father and the petitioner secured a decree of permanent injunction in O.S.No.187 of 2014 dated 26.02.2015 against one S.Seiyyad Bawa Kasim, the brother of the petitioner. When the petitioner filed E.P.No.47 of 2015 before the Principal District Munsif Court, Nagercoil, the petitioner's father Mr.Sheik Iliyas filed E.A.No.16 of 2016, wherein a claim was made with regard to the property in question, the said claim petition has been dismissed by the executing Court by order dated 18.04.2017.

5.In the background of these facts, the petitioner is now aggrieved by the impugned communication, because his father has given a petition to the second respondent dated 21.06.201. As pointed out earlier, the impugned proceedings is only an internal communication between the second and third respondent. Therefore,



it goes without saying that even assuming that there is an encroachment, the third respondent cannot straight away take action without following due procedure established by law.

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6. Therefore, we dispose of this writ petition with an observation that the respondent, if they intend to proceed further in the matter, should do so after notice to the petitioner and after following the procedure under the relevant Statute.

7. The learned counsel for the 3rd respondent, on instructions, would submit that the Municipality will proceed only after issuing notice. Therefore, the petitioner need not have any apprehension that he will be dispossessed without following proper procedure. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Crl.Side)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
Kanyakumari District.

2. The Tahsildar,
Agasteeswaram Taluk,
Nagercoil.

3. The Commissioner,
Nagercoil Municipality,
Nagercoil.

+1cc to M/S.RM.ARUN SWAMINATHAN, Advocate SR.No.50438.

+1cc to Special Government Pleader in SR.No.50777.

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and

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