



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **05.03.2018**

CORAM:

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

W.P.[MD].No.4543 of 2018
and
W.M.P.[MD]Nos.4643 and 4644 of 2018

Bootharaj : Petitioner

Vs.

1. The District Collector,
Madurai, Madurai District.
2. The Commissioner,
East Panchayat Union,
Madurai District.
3. The Executive Officer,
Y.Othakadai Panchayat,
East Panchayat Union,
Madurai District.
4. The Assistant Engineer,
Tamil Nadu Electricity Board,
Rajagambeeram,
Y.Othakadai,
Madurai District.

5.Muthusamy : Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the third respondent to take necessary action against the unauthorized construction of the 5th respondent in Survey No.138/11C2 in Kodikulam 1st Bit Village, bearing Plot No.1, to an extent of 1459 square feet as per Rule 34(1) of the Tamil Nadu Panchayat Building Rules, 1970.

For Petitioner
For R1 to R3

: Mr.T.Ramesh
: Mr.D.Muruganantham,
Additional Government Pleader.
: Mr.S.M.S.Johnny Basha
Standing Counsel

**O R D E R**

[Order of the Court was made by **T.S.SIVAGNANAM, J.**]

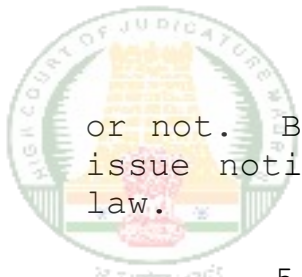
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Heard Mr.T.Ramesh, learned counsel appearing for the petitioner, Mr.D.Muruganantham, learned Additional Government Pleader, who accepts notice on behalf of the respondents 1 to 3, and Mr.S.M.S.Johnny Basha, learned Standing Counsel, who accepts notice on behalf of the 4th respondent. In the light of the directions we propose to issue, notice to the 5th respondent is dispensed with.

2.The petitioner claims that he is the owner of the land in Survey No.138/11C2, claiming title to the property through one R.Petchiammal. The petitioner's case is that the said Petchiammal acquired title to the said property, pursuant to the compromise decree passed in S.A.(MD)No.943 of 2005 dated 27.03.2013. One of the allegations made by the petitioner against the 5th respondent is that he is constructing a building on the property owned by the petitioner comprising in Survey No.138/11C2.

3.We make it clear that the dispute between the petitioner and the 5th respondent being civil in nature cannot be agitated in a writ petition. The learned counsel appearing for the petitioner readily agreed and submitted that the petitioner is not canvassing the right over the property and so far as the said dispute is concerned, the petitioner will workout the same before the appropriate forum. Furthermore, it is submitted that the petitioner does not seek for any relief of recovery of possession of the said property from the 5th respondent. But, his only grievance is that the third respondent has not taken note of the fact that the 5th respondent is constructing a house in the property without obtaining any building plan approval. We are not satisfied with the *bona fides* of the petitioner's claim as the petitioner is indirectly attempting to agitate his civil rights by way of this writ petition. We are of the view that even assuming that the 5th respondent has any right over the property, construction cannot be put up by the 5th respondent without obtaining planning permission. To this extent, the third respondent ought to have considered the issue without going into the dispute over the property between the petitioner and the 5th respondent.

4.In the light of the above, while refraining from expressing any opinion, as regards the title to the property in question, we only direct the third respondent to look into the aspect as to whether the construction alleged to have been set up by the 5th respondent is authorized or unauthorized and whether the planning approval has been obtained



or not. Before initiating any action, the third respondent should issue notice to the 5th respondent and proceed in accordance with law.

5. Be it noted that we have not issued any positive direction straight away to take action and the third respondent is bound to follow the procedure established by the law. The direction be complied with by the third respondent, namely, the Executive Officer, within a period of four weeks from the date of receipt of a copy of this order.

6. With the above observation, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
Madurai, Madurai District.
2. The Commissioner,
East Panchayat Union,
Madurai District.
3. The Executive Officer,
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East Panchayat Union,
Madurai District.
4. The Assistant Engineer,
Tamil Nadu Electricity Board,
Rajagambeeram,
Y.Othakadai,
Madurai District.

+ 1 cc TO Mr.T.Ramesh , Advocate in SR No. 52765
+ 1 cc TO The Special Government Pleader in SR No. 53348

Myr/ta
AE/GT/SAR2/16.03.2018/3P/7C