



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

AND

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P (MD) No.9291 of 2018

and

W.M.P (MD) No.8600 of 2018

Syed Ali

... Petitioner

Vs.

The Tahsildar,
Agasteeswaram Taluk,
Nagercoil.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, forbearing the respondent from evicting the petitioner from the property in Survey No.578/6, Kanyakumari Village, Agasteeswaram Taluk, Kanyakumari District (Door No.5-51, Muslim street, Kanyakumari), without following the relevant provisions of law and consequently directing the respondent and his subordinates to strictly adhere to the due process of law.

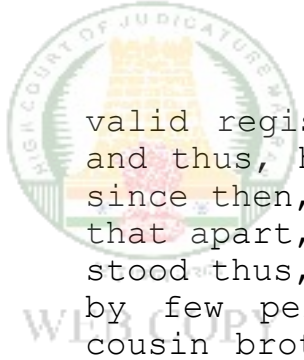
For Petitioner	: Mr.RM.Arun Swaminathan
For Respondent	: Mr.VR.Shanmuganathan, Special Government Pleader.

ORDER

(Order of the Court was made by T.RAJA,J.)

The petitioner has filed the above Writ Petition to issue a Writ of Mandamus, forbearing the respondent from evicting him from the property bearing Survey No.578/6, Kanyakumari Village, Agasteeswaram Taluk, Kanyakumari District (Door No.5-51, Muslim street, Kanyakumari), without following the relevant provisions of law and consequently directing the respondent and his subordinates to strictly adhere to the due process of law.

2. The learned counsel appearing for the petitioner submits that the petitioner is residing in Door No.5/51B and running a small hotel and few shops adjacent to his house. Originally, the said property belonged to his grandfather and he transferred the title over the property to the mother of the petitioner, through a valid registered gift deed in the year 1974. Subsequently, the mother of the petitioner transferred the same to the petitioner through a



valid registered Settlement Deed No.2005 of 2009, dated 03.06.2009 and thus, he has become the absolute owner of the said property and since then, he has been paying the property tax, provisional tax and that apart, the respondent has also issued 'B' memo. When the matter stood thus, in the year 2013, an unauthorized auto stand was started by few persons affiliated to a political party. Therefore, his cousin brother filed a Writ Petition in W.P(MD)No.3669 of 2013 for removal of the said encroachment and the same was disposed of by this Court and the unauthorized auto stand was removed by Kanyakumari Town Panchayat. Having enraged by the action taken by his cousin brother, some other person has given a complaint against the petitioner and his cousin brother stating that they have encroached upon the Government land. On 03.04.2018, the subordinates of the respondent surveyed the property in question of his cousin brother without following due procedure and threatened to evict him without any notice. Hence, his cousin brother filed a Writ Petition in W.P(MD)No.8200 of 2018. This Court, by order dated 13.04.2018, recording the submission made by the learned Special Government Pleader that the petitioner therein had encroached the property and they would take action against the petitioner therein only in accordance with law and shall not dispossess the petitioner in an illegal manner and disposed of the Writ Petition. Hence, the subordinates of the respondent surveyed the property in question of the petitioner and sheet metal roofed shop on 16.04.2018 without giving any notice and no procedure has been followed. Apprehending that any coercive action shall be taken in the shops in question, the petitioner is constrained to file this Writ Petition.

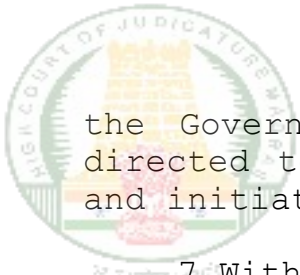
3. A detailed counter-affidavit has been filed by the Tahsildar, Agasteeswaram.

4. The learned Special Government Pleader appearing for the respondent submitted that the District Backward Class and Minority Welfare Officer has requested the Tahsildar to identify the land for the formation of the burial ground for Muslims. Hence, the subordinates of the respondent inspected the land in question and later it was found that the same was not a suitable place for the burial ground, since the above said land was in Kanyakumari Highway. In view of the same, the Government has dropped the plan for the formation of burial ground for Muslims and the allegations made by the petitioner are baseless and unsustainable. Since the land vests with the Government and if the said land is required for the Government for public purpose in future, eviction procedure will be initiated under the Tamil Nadu Land Encroachment and Eviction Act, 1905.

5. As the respondent has made it clear that as and when any requirement is made to take the land in question for public utility purpose, they would take action as per the Tamil Nadu Land Encroachment and Eviction Act, 1905.

<https://hcservices.ecourts.gov.in/hcservices/>

6. In view of the same, as and when any requirement arises for



the Government to take the land in question, the respondent is directed to issue notice to the petitioner in accordance with law and initiate action as per law.

7. With the above directions, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/

Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar (CS-II)

To
The Tahsildar,
Agasteeswaram Taluk,
Nagercoil.

+1cc to M/s. Special Government Pleader, SR.No. 80269

W.P (MD) No. 9291 of 2018
24.08.2018

PS
KK/RP/SAR-2/26.09.2018/3P-3C