



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.07.2018

CORAM:

WEB COPY

**THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU
AND
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI**

W.A(MD)NO.912 OF 2018
and
C.M.P(MD)No.5918 of 2018

Murugan @ Murugavel

: Appellant/Petitioner

.vs.

1. The District Collector,
Tirunelveli District.
2. The Assistant Director,
Rural Development and Panchayatraj Department,
Tirunelveli District.
3. The Block Development Officer,
Radhapuram Panchayat Union,
Tirunelveli District.
4. The Executive Officer,
Kasturirengapuram Village,
Radhapuram Union.
5. Arumugam.

: Respondents/Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent praying this Court to set aside the order passed by this Court in W.P(MD)No.7468 of 2017, dated 21.04..2017.

Prayer in WP(MD). 7468/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the 1st respondent to cancel the allotment of funds under the free housing scheme, in favour of the 5th respondent for constructing the house in S.No.811/5A in Kasturirengapuram village, in Radhapuram Taluk in Tirunelveli District by disposing the petitioners representation dated 07.04.2017.



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For Appellant	: Mr.R.Suriyanarayanan
For Respondents	: Mr.VR.Shanmuganathan
1 to 4	Special Govt.Pleader
For Respondent-5	: Mr.S.Palanivelayutham

JUDGMENT

[Judgment of the Court was made by K.RAVICHANDRABAABU, J.]

Mr.VR.Shanmuganathan, learned Special Government Pleader takes notice for the respondents 1 to 4 and Mr.S.Palanivelayutham, learned counsel takes notice for the fifth respondent and by consent, the main Writ Appeal is taken up for final disposal.

2.This Writ Appeal is directed against the order of the Writ Court in dismissing the W.P(MD)No.7468 of 2017,dated 21.04.2017.

3.The appellant is the Writ Petitioner. He sought for a mandamus directing the first respondent to cancel the allotment of funds under the Free Housing Scheme in favour of the fifth respondent for constructing the house in S.No.811/5A, Kasturirengapuram Village, Radhapuram Taluk, Tirunelveli District by disposing the Petitioner's representation, dated 7.4.2017.The Writ Court dismissed the Writ Petition on the reason that a partition suit in O.S.No.,147 of 2016 was pending before the District Munsif Court, Valliyoor, wherein, the fifth respondent is also a party. Therefore, the Writ Court found that the present relief as sought for by the Writ Petitioner cannot be granted.

4.The learned counsel for the appellant contended that during the pendency of the suit, if any construction is put up in the subject-matter property, it would prejudice the interest of the appellant/Writ Petitioner. We are not expressing any view on the merits of the claim made by the respective parties, as We propose to dispose the Writ Appeal without affecting the interest of any of the parties as follows:

5(a).Admittedly, the appellant/Writ Petitioner made a representation, dated 7.4.2017 before the third respondent and also by furnishing a copy of the same to the respondents 1 and 2. Therefore, it is for the third respondent to consider the said representation and pass orders on the same on merits and in accordance with law after giving due opportunity of hearing to the Petitioner, fifth respondent and other interested persons, if any. If the third respondent finds that a civil dispute is pending between the parties touching upon the subject-matter in issue before the Writ Court, it is open to the third respondent to



direct the parties to approach the Civil Court and seek appropriate relief.

5(b) Accordingly, this Writ Appeal is allowed in part and the order of the Writ Court is set aside only by directing the third respondent to consider the representation of the Writ Petitioner, dated 07.04.2017 and pass orders on the same on merits and in accordance with law after hearing the Writ Petitioner, fifth respondent and other interest parties, if any. Such exercise shall be done by the third respondent within a period of three weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar (CS-I)

To

1. The District Collector,
Tirunelveli District.
 2. The Assistant Director,
Rural Development and Panchayatraj Department,
Tirunelveli District.
 3. The Block Development Officer,
Radhapuram Panchayat Union,
Tirunelveli District.
 4. The Executive Officer,
Kasturirengapuram Village,
Radhapuram Union.
- + 1 CC TO Mr.R.SURIYA NARAYANAN, ADVOCATE IN SR No. 75481
+ 1 CC TO Mr.S.PALANI VELAYUTHAM, ADVOCATE IN SR No. 75302

VSN

TE/RP/SAR-1 : 06/08/2018 : 3P/7C

JUDGMENT MADE IN
W.A(MD) NO.912 OF 2018 and
C.M.P(MD) No.5918 of 2018
26.07.2018